



# *State of Alaska*

## *PERS Statutes*

*January*  
*2010*

*Including the:*

- ✧ Public Employees' Retirement System*
- ✧ Supplemental Benefits System*
- ✧ Group Health and Life Insurance Plan, and the*
- ✧ Deferred Compensation Plan for State Employees.*

*The statutes in this handbook  
are current as of December 31, 2009.  
Amendments occurring after that date may  
be found in the Alaska Statutes and  
Alaska Administrative Code.*

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# Alaska Statutes

## ARTICLE 06. ALASKA RETIREMENT MANAGEMENT BOARD

### SEC. 37.10.210. ALASKA RETIREMENT MANAGEMENT BOARD.

(a) The Alaska Retirement Management Board is established in the Department of Revenue. The board's primary mission is to serve as the trustee of the assets of the state's retirement systems, the State of Alaska Supplemental Annuity Plan, and the deferred compensation program for state employees, and the Alaska retiree health care trusts established under AS 39.30.097. Consistent with standards of prudence, the board has the fiduciary obligation to manage and invest these assets in a manner that is sufficient to meet the liabilities and pension obligations of the systems, plan, program, and trusts. The board may, with the approval of the commissioner of revenue and upon agreement with the responsible fiduciary, manage and invest other state funds so long as the activity does not interfere with the board's primary mission. In making investments, the board shall exercise the powers and duties of a fiduciary of a state fund under AS 37.10.071.

(b) The Alaska Retirement Management Board consists of nine trustees, as follows:

(1) two members, consisting of the commissioner of administration and the commissioner of revenue;

(2) seven trustees appointed by the governor who meet the eligibility requirements for an Alaska permanent fund dividend and who are professionally credentialed or have recognized competence in investment management, finance, banking, economics, accounting, pension administration, or actuarial analysis as follows:

(A) two trustees who are members of the general public; the trustees appointed under this subparagraph may not hold another state office, position, or employment and may not be members or beneficiaries of a retirement system managed by the board;

(B) one trustee who is employed as a finance officer for a political subdivision participating in either the public employees' retirement system or the teachers' retirement system;

(C) two trustees who are members of the public employees' retirement system, selected from a list of four nominees submitted from among the public employees' retirement system bargaining units;

(D) two trustees who are members of the teachers' retirement system selected from a list of four nominees submitted from among the teachers' retirement system bargaining units;

(E) the lists of the nominees shall be submitted to the governor under (C) and (D) of this paragraph within the time period specified in regulations adopted under AS 37.10.240(a).

(c) The trustees, other than the two commissioners, shall serve for staggered terms of four years and may be reappointed to the board.

(d) The governor may, by written notice to the trustee, remove an appointed trustee for cause. After an appointed trustee receives written notice of removal, the trustee may not participate in board business and may not be counted for purposes of establishing a quorum.

(e) A vacancy on the board of trustees shall be promptly filled. A person filling a vacancy holds office for the balance of the unexpired term of the person's predecessor. A vacancy on the board does not impair the authority of a quorum of the board to exercise all the powers and perform all the duties of the board.

(f) Five trustees constitute a quorum for the transaction of business and the exercise of the powers and duties of the board.

(g) A trustee may not designate another person to serve on the board in the absence of the trustee.

(h) The board shall provide annual training to its members on the duties and powers of a fiduciary of a state fund and other training as necessary to keep the members of the board educated about pension management and investment.

(i) The board shall elect a trustee to serve as chair and a trustee to serve as vice-chair for one-year terms. A trustee may be reelected to serve additional terms as chair or vice-chair.

History - (Sec. 1 ch 31 SLA 1992; am Sec. 58 ch 9 FSSLA 2005; am Sec. 49 ch 20 SLA 2007)

Cross References - For transitional provision applicable to the appointment and length of the terms of office of members of the Alaska Retirement Management Board who are first appointed under this section, see sec. 135, ch. 9, FSSLA 2005 in the 2005 Temporary and Special Acts. For transitional

provisions affecting terms of board members of the former Alaska State Pension Investment Board, repealed by the reenactment of this section, see sec. 137, ch. 9, FSSLA 2005 in the 2005 Temporary and Special Acts. For section describing the transition of duties between the former Alaska State Pension Investment Board and the Alaska Retirement Management Board before October 1, 2005, see sec. 138, ch. 9, FSSLA 2005 in the 2005 Temporary and Special Acts. For obligation of the Alaska Retirement Management Board to report to the legislature at the beginning of the 2006 regular legislative session and the contents of that report, see sec. 141, ch. 9, FSSLA 2005 in the 2005 Temporary and Special Acts.

Amendment Notes - The 2005 amendment, effective July 28, 2005, rewrote this section.

The 2007 amendment, effective June 7, 2007, added “and the Alaska retiree health care trusts established under AS 39.30.097” at the end of the second sentence of subsection (a), and substituted “program and trusts” for “and program” in the third sentence of that subsection.

Editors Notes - Section 146, ch. 9, FSSLA 2005, makes the repeal and reenactment of this section retroactive to July 1, 2005.

Article Notes - Administrative Code. For Alaska retirement management investment board, see 15 AAC 112.

Legislative History Reports. For legislative letter of intent in connection with the enactment of AS 37.10.210 - 37.10.390 by Sec. 1, ch. 31, SLA 1992 (HCS CSSB 329 (FIN)), see 1992 Senate Journal, p. 1872.

## **SEC. 37.10.215. ATTORNEY GENERAL.**

The attorney general is the legal counsel for the board and shall advise the board and represent it in a legal proceeding.

History - (Sec. 59 ch 9 FSSLA 2005)

Effective Date Notes - Section 151, ch. 9, FSSLA 2005, provides that this section is effective July 1, 2005. The act was approved by the governor on July 27, 2005, and, pursuant to AS 01.10.070(d), this section is effective July 28, 2005.

Editors Notes - Section 146, ch. 9, FSSLA 2005, provides that this section is retroactive to July 1, 2005.

**SEC. 37.10.220. POWERS AND DUTIES OF THE BOARD.**

(a) The board shall

(1) hold regular and special meetings at the call of the chair or of at least five members; meetings are open to the public, and the board shall keep a full record of all its proceedings;

(2) after reviewing recommendations from the Department of Revenue, adopt investment policies for each of the funds entrusted to the board;

(3) determine the appropriate investment objectives for the defined benefit plans established under the teachers' retirement system under AS 14.25 and the public employees' retirement system under AS 39.35;

(4) assist in prescribing the policies for the proper operation of the systems and take other actions necessary to carry out the intent and purpose of the systems in accordance with AS 37.10.210 - 37.10.390;

(5) provide a range of investment options and establish the rules by which participants can direct their investments among those options with respect to accounts established under

(A) AS 14.25.340 - 14.25.350 (teachers' retirement system defined contribution individual accounts);

(B) AS 39.30.150 - 39.30.180 (State of Alaska Supplementary Annuity Plan);

(C) AS 39.35.730 - 39.35.750 (public employees' retirement system defined contribution individual accounts); and

(D) AS 39.45.010 - 39.45.060 (public employees' deferred compensation program);

(6) establish the rate of interest that shall be annually credited to each member's individual contribution account in accordance with AS 14.25.145 and AS 39.35.100 and the rate of interest that shall be annually credited to each member's account in the health reimbursement arrangement plan under AS 39.30.300 - 39.30.495; the rate of interest shall be adopted on the basis of the probable effective rate of interest on a long-term basis, and the rate may be changed from time to time;

(7) adopt a contribution surcharge as necessary under AS 39.35.160(c);

(8) coordinate with the retirement system administrator to have an annual actuarial valuation of each retirement system prepared to determine system assets, accrued liabilities, and funding ratios and to certify to the appropriate budgetary authority of each employer in the system

(A) an appropriate contribution rate for normal costs; and

(B) an appropriate contribution rate for liquidating any past service liability;

(9) review actuarial assumptions prepared and certified by a member of the American Academy of Actuaries and conduct experience analyses of the retirement systems not less than once every four years, except for health cost assumptions, which shall be reviewed annually; the results of all actuarial assumptions prepared under this paragraph shall be reviewed and certified by a second member of the American Academy of Actuaries before presentation to the board;

(10) contract for an independent audit of the state's actuary not less than once every four years;

(11) contract for an independent audit of the state's performance consultant not less than once every four years;

(12) obtain an external performance review to evaluate the investment policies of each fund entrusted to the board and report the results of the review to the appropriate fund fiduciary;

(13) by the first day of each regular legislative session, report to the governor, the legislature, and the individual employers participating in the state's retirement systems on the financial condition of the systems in regard to

(A) the valuation of trust fund assets and liabilities;

(B) current investment policies adopted by the board;

(C) a summary of assets held in trust listed by the categories of investment;

(D) the income and expenditures for the previous fiscal year;

(E) the return projections for the next calendar year;

(F) one-year, three-year, five-year, and 10-year investment performance for each of the funds entrusted to the board; and

(G) other statistical data necessary for a proper understanding of the financial status of the systems;

(14) submit quarterly updates of the investment performance reports to the Legislative Budget and Audit Committee;

(15) develop an annual operating budget; and

(16) administer pension forfeitures required under AS 37.10.310 using the procedures of AS 44.62 (Administrative Procedure Act).

(b) The board may

(1) employ outside investment advisors to review investment policies;

(2) enter into an agreement with the fiduciary of another state fund in order to assume the management and investment of those assets;

(3) contract for other services necessary to execute the board's powers and duties;

(4) enter into confidentiality agreements that would exempt records from AS 40.25.110 and 40.25.120 if the records contain information that could affect the value of investment by the board or that could impair the ability of the board to acquire, maintain, or dispose of investments.

(c) Expenses for the board and the operations of the board shall be paid from the retirement fund.

History - (Sec. 1 ch 31 SLA 1992; am Sec. 61 ch 21 SLA 1995; am Sec. 60, 61 ch 9 FSSLA 2005; am Sec. 49 ch 47 SLA 2007)

Amendment Notes - The 2005 amendment, effective July 28, 2005, rewrote this section; and, effective July 1, 2006, in subsection (a), in paragraph (5), added subparagraphs (A) and (C) and the subparagraph (B) and (D) designations, and, in paragraph (6) inserted the language beginning "and the rate of interest" to the semicolon.

The 2007 amendment, effective July 10, 2007, added paragraph (a)(16).

Editors Notes - Section 146, ch. 9, FSSLA 2005, makes the 2005 repeal and reenactment of this section retroactive to July 1, 2005.

**SEC. 37.10.230. CONFLICTS OF INTEREST.**

(a) Trustees are subject to the provisions of AS 39.50.

(b) If a trustee acquires, owns, or controls an interest, direct or indirect, in an entity or project in which assets under the control of the board are invested, the trustee shall immediately disclose the interest to the board. The disclosure is a matter of public record and shall be included in the minutes of the board meeting next following the disclosure. The board shall adopt regulations to restrict trustees from having a substantial interest in an entity or project in which assets under the control of the board are invested.

History - (Sec. 1 ch 31 SLA 1992)

**SEC. 37.10.240. REGULATIONS AND OPEN MEETINGS.**

(a) The board may adopt regulations to implement AS 37.10.210 - 37.10.390. Regulations adopted by the board are not subject to the Administrative Procedure Act (AS 44.62). The board shall adopt regulations required by AS 36.30.015(f) relating to procurement. The board shall comply with the requirements of AS 44.62.310 - 44.62.312.

(b) Notwithstanding (a) of this section, a regulation adopted under AS 37.10.210 - 37.10.390 shall be published in the Alaska Administrative Register and Alaska Administrative Code for informational purposes. A regulation adopted under this section shall conform to the style and format requirements of the drafting manual for administrative regulations that is published under AS 44.62.050.

(c) At least 30 days before the adoption, amendment, or repeal of a regulation under this chapter, the board shall provide notice of the action that is being considered. The notice must include publication in one or more newspapers of general circulation in each judicial district of the state.

(d) A regulation adopted under this chapter takes effect 30 days after adoption by the board unless a later effective date is stated in the regulation.

(e) Notwithstanding the other provisions of this section, a regulation may be adopted, amended, or repealed, effective immediately, as an emergency regulation. For an emergency regulation to be effective the board must find that the immediate adoption, amendment, or repeal of the regulation is necessary. The board shall, within 10 days after adoption of an emergency regulation, give notice of the adoption under (c) of this section. An emergency regulation adopted under this subsection may not remain in effect past the date of the next regular meeting of the board unless the board complies with the procedures set out in this section and adopts the regulation as a permanent regulation.

(f) In this section, “regulation” has the meaning given in AS 44.62.640(a).

History - (Sec. 1 ch 31 SLA 1992)

### **SEC. 37.10.250. COMPENSATION OF TRUSTEES.**

Trustees, other than trustees who are employees of the state, a political subdivision of the state, or a school district or regional educational attendance area in the state, receive an honorarium of \$400 for each day spent at a meeting of the board or at a meeting of a subcommittee of the board or at a public meeting as a representative of the board, including a day in which a trustee travels to or from a meeting. Trustees who are state employees are entitled to administrative leave for service as a trustee. Trustees who are employees of a political subdivision of the state or a school district or regional educational attendance area in the state are entitled to leave benefits provided by their employers comparable to those provided to state employees for service as a trustee. Trustees are entitled to per diem and travel expenses authorized for boards and commissions under AS 39.20.180.

History - (Sec. 1 ch 31 SLA 1992; am Sec. 62 ch 9 FSSLA 2005)

Amendment Notes - The 2005 amendment, effective July 28, 2005, inserted “or a school district or regional attendance area in the state” in two places, substituted “\$400” for “\$150”, and inserted “, including a day in which a trustee travels to or from a meeting”.

Editors Notes - Section 146, ch. 9, FSSLA 2005, makes the 2005 amendment of this section retroactive to July 1, 2005.

### **SEC. 37.10.260. STAFF.**

(a) The Department of Revenue shall provide staff for the board.

(b) The board may designate a trustee or an officer or employee of the Department of Revenue to be responsible for signing on behalf of the board a deed, contract, or other document that must be executed by or on behalf of the board.

History - (Sec. 1 ch 31 SLA 1992)

### **SEC. 37.10.270. INVESTMENT ADVISORY COUNCIL.**

(a) The board may appoint an investment advisory council composed of at least three and not more than five members. Members of the council shall possess experience and expertise in financial investments and management of investment portfolios for public, corporate, or union pension benefit funds, foundations, or endowments.

(b) Members of the council serve at the pleasure of the board for staggered terms of three years.

(c) The board shall establish the compensation of members of the council. Members of the council are entitled to per diem and travel expenses authorized for boards and commissions under AS 39.20.180.

(d) The council shall

(1) review the investments made by the board;

(2) make recommendations to the board concerning the board's investment policies, investment strategy, and investment procedures;

(3) advise the board on selection of performance consultants and on the form and content of annual reports;

(4) provide other advice as requested by the board.

(e) With approval of the board, the council may contract with other state agencies to provide investment advice.

History - (Sec. 1 ch 31 SLA 1992; am Sec. 63 ch 9 FSSLA 2005)

Amendment Notes - The 2005 amendment, effective July 28, 2005, substituted "may appoint" for "shall appoint" in the first sentence in subsection (a).

Editors Notes - Under Sec. 146, ch. 9, FSSLA 2005, the 2005 amendments to (a) of this section made by ch. 9, FSSLA 2005, are retroactive to July 1, 2005.

### **SEC. 37.10.280. INSURANCE.**

The board shall ensure that trustee assets and its own services are protected. The board may purchase insurance or provide for self-insurance retention in amounts recommended by the commissioner of revenue and approved by the board to cover the acts, including fiduciary acts, errors, and omissions of its board members and agents. Insurance must protect the board and the state from liability to others and from loss of trustee assets due to the acts or omissions of the trustees.

History - (Sec. 1 ch 31 SLA 1992)

### **SEC. 37.10.290. EXEMPTION FROM TAXATION.**

Except as provided in AS 29.45.030(a) for property acquired through foreclosure or deed in lieu of foreclosure, the board and all properties at any time owned by it, managed by it, or held by it in trust, and the income from those activities, are exempt from all taxes and assessments in the state. All

security instruments issued by the board and income from them are exempt from all taxes and assessments in the state, including transfer taxes.

History - (Sec. 1 ch 31 SLA 1992)

### **SEC. 37.10.300. LIMITATIONS.**

The board may not engage in commercial banking activity or private trust activity. The board may not act as a depository or trustee for a private person, association, or corporation. The board may not act as a lender to a private person, association, or corporation of money from any source except state funds under management by the board.

History - (Sec. 1 ch 31 SLA 1992)

### **SEC. 37.10.310. PENSION FORFEITURE BY PUBLIC OFFICERS CONVICTED OF CRIMES INVOLVING CORRUPTION.**

(a) A public officer, as defined in AS 39.52.960, a legislator, or a person employed as a legislative director, as that term is defined in AS 24.60.990, who is convicted of a federal or state felony offense of bribery, receiving a bribe, perjury, subornation of perjury, scheme to defraud, fraud, mail fraud, misuse of funds, corruption, or tax evasion may not receive a state pension benefit if the offense was committed on or after July 10, 2007 and was in connection with the person's official duties.

(b) Pension benefits and employee contributions that accrue to a person before the date of the person's commission of the offense described in (a) of this section are not diminished or impaired by that subsection.

(c) A state pension benefit under (a) of this section does not include

(1) insurance, voluntary wage reductions, involuntary wage reductions, or supplemental or health benefits under AS 39.30.090 - 39.30.495 or former AS 39.37.145;

(2) member or employee contributions under AS 14.25.050, 14.25.055, 14.25.075, 14.25.340, 14.25.360(a), AS 22.25.011, AS 39.35.160, 39.35.165(f), 39.35.180, 39.35.730, 39.35.760(a), or former AS 39.37.070.

(d) In a pension forfeiture matter under this section, the board may award to a spouse, dependent, or former spouse of the person governed by the limitations in (a) of this section some or all of the amount that, but for the forfeiture under (a) of this section, may otherwise be payable. In determining whether to make an award under this subsection, the board shall consider the totality of circumstances, including

(1) the role, if any, of the person’s spouse, dependent, or former spouse in connection with the illegal conduct for which the person was convicted; and

(2) the degree of knowledge, if any, possessed by the person’s spouse, dependent, or former spouse in connection with the illegal conduct for which the person was convicted.

History - (Sec. 50 ch 47 SLA 2007)

Cross References - For applicability of this section, see AS 14.25.212, AS 14.25.532, AS 22.25.800, AS 39.35.273, and AS 39.35.932.

Effective Date Notes - Section 79, ch. 47, SLA 2007, makes this section effective July 10, 2007, in accordance with AS 01.10.070(c).

Editors Notes - Under Sec. 76, ch. 47, SLA 2007, the provisions of this section “apply to benefits under former AS 39.37 (elected public officers’ retirement system).”

### **SEC. 37.10.390. DEFINITIONS.**

In AS 37.10.210 - 37.10.390, unless the context otherwise requires,

(1) “board” means the board of trustees of the Alaska Retirement Management Board;

(2) “fund” means the fund or funds composed of the assets of each of the retirement systems administered and managed by the board;

(3) “recognized competence” means a minimum of 10 years’ professional experience working or teaching in the field of investment management, finance, banking, economics, accounting, pension administration, or actuarial analysis;

(4) “retirement systems” or “systems” means the teachers’ retirement system, the judicial retirement system, the Alaska National Guard and Alaska Naval Militia retirement system, the public employees’ retirement system, the State of Alaska Teachers’ and Public Employees’ Retiree Health Reimbursement Arrangement Plan, and the elected public officers’ retirement system under former AS 39.37.

History - (Sec. 1 ch 31 SLA 1992; am Sec. 64 ch 9 FSSLA 2005)

Amendment Notes - The 2005 amendment, effective July 28, 2005, substituted “Alaska Retirement Management Board” for “Alaska State Pension Investment Board” in paragraph (1); added paragraphs (2) and (3) and the paragraph (4) designation; and in paragraph (4) inserted “or “systems”” and added the language beginning “, the State of Alaska” to the end of the paragraph.

Editors Notes - Section 146, ch. 9, FSSLA 2005, makes the 2005 amendment of this section retroactive to July 1, 2005.

**SEC. 37.14.160. DUTIES OF THE COMMISSIONER OF REVENUE.**

The commissioner of revenue is the treasurer of the trust fund created in AS 37.14.110 and shall

(1) in carrying out investment duties under this section, exercise the same powers and duties established for the Alaska Retirement Management Board in AS 37.10.220;

(2) deposit the principal and income from investments in separate principal and income accounts for the fund;

(3) invest and maintain accounting records that distinguish between the principal and income of the fund;

(4) provide reports to the board established under AS 37.14.120 on the condition and investment performance of the fund.

History - (Sec. 4 ch 182 SLA 1978; am Sec. 29 ch 85 SLA 1988; am Sec. 24 ch 141 SLA 1988; am Sec. 13 ch 31 SLA 1992; am Sec. 65 ch 9 FSSLA 2005)

Amendment Notes - The 2005 amendment, effective July 28, 2005, substituted “Alaska Retirement Management Board” for “Alaska State Pension Investment Board” and updated a section reference.

Editors Notes - Section 146, ch. 9, FSSLA 2005, makes the 2005 amendment of this section retroactive to July 1, 2005.

## TITLE 39. PUBLIC OFFICERS AND EMPLOYEES

### CHAPTER 39.35. PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF ALASKA

#### Article

1. Administration (secs. 39.35.001—39.35.080)
2. Public Employees' Defined Benefit Retirement Plan (secs. 39.35.095-115)
3. Membership (secs. 39.35.120—39.35.158)
4. Contributions by Employees (secs. 39.35.160—39.35.240)
5. Contributions by Employers (secs. 39.35.250—39.35.290)
6. Service (secs. 39.35.300—39.35.360)
7. Benefits (secs. 39.35.370—39.35.547)
8. Participation by Political Subdivisions and Public Organizations (secs. 39.35.550—39.35.650)
9. General Provisions (secs. 39.35.660—39.35.690)
10. Employees first hired on or after July 1, 2006 (secs. 39.35.700-.990)
11. General Provisions Application to Title (39.35.995)

Cross References - For group life and health insurance for retired public officers and employees, see AS 39.30.090. For retirement incentive program, see Sec. 21-35, ch. 4, FSSLA 1996 in the Temporary and Special Acts.

Administrative Code - For public employees' retirement system, see 2 AAC 35.

Editors Notes - In general, a person's right to benefits under the state's public employee retirement systems vests when the person joins the system. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981). Therefore, former law may govern the benefits of some members of the teachers' retirement system. The user is advised to ascertain which version of a particular statute is applicable. Earlier versions of the statutes can be found in prior editions of the Alaska Statutes or in the published Session Laws of Alaska.

This chapter was extensively amended by ch. 82, SLA 1986. Sections 57-58, ch. 82, SLA 1986, as amended by Sec. 34, ch. 106, SLA 1988, provide: "Sections 16, 22-23, 25-27, 42, 44, 45, and 50 of this Act apply only to members first hired under the Public Employees' Retirement System after June 30, 1986. Changes in the Public Employees' Retirement System enacted in this Act that require a reduction in benefits to members of the retirement system apply only to members who are first hired under the retirement system after June 30, 1986 .... The amendments made by secs. 46 and 49 of this Act apply only to members first hired under the Public Employees' Retirement System after December 31, 1986 .... Other sections of this Act apply to all members of the Public Employees' Retirement System, regardless of the date of hire."

History Reports - For governor's transmittal letter for ch. 92, SLA 2004 (SB 232), making a series of amendments to this chapter to ensure compliance with federal Internal Revenue Service changes that maintain the retirement system as a qualified plan, see 2003 Senate Journal 1722 - 1723.

AG Opinions - This fund does not represent an unconstitutional dedication of public funds under Sec. 7, art. IX, of the state constitution, as that section of the constitution contains an implied exception for pension fund contributions. November 30, 1982 Op. Att'y Gen.

## ARTICLE 01. ADMINISTRATION

### SEC. 39.35.001. PURPOSE.

The purpose of this chapter is to encourage qualified personnel to enter and remain in service with participating employers by establishing plans for the payment of retirement, disability, and death benefits to or on behalf of the members.

History - (Sec. 81 ch 9 FSSLA 2005)

Article Notes - Cross References. For transitional provisions describing the relationship between pending hearings and other proceedings, orders and regulations adopted and in effect, contracts, rights, liabilities, and obligations, and records, equipment, appropriations, funds and other property of boards and agencies affected by the 2005 amendment of this chapter, and the provisions of ch. 9, FSSLA 2005, relating to administration of the public employees' retirement system, see Sec. 139, ch. 9, FSSLA 2005, in the 2005 Temporary and Special Acts.

### SEC. 39.35.002. ATTORNEY GENERAL.

The attorney general of the state is the legal counsel for the system and shall advise the administrator and represent the system in a legal proceeding.

History - (Sec. 81 ch 9 FSSLA 2005)

### SEC. 39.35.003. ADMINISTRATOR.

(a) The commissioner of administration or the commissioner's designee is the administrator of the system.

(b) The commissioner of administration shall adopt regulations to govern the operation of the system.

History - (Sec. 81 ch 9 FSSLA 2005)

**SEC. 39.35.004. POWERS AND DUTIES OF THE ADMINISTRATOR.**

(a) The administrator shall

- (1) establish and maintain an adequate system of accounts;
- (2) transmit the funds deposited in the system to the retirement fund established and maintained by the Alaska Retirement Management Board;
- (3) approve or disapprove claims for retirement benefits;
- (4) make payments for the various purposes specified;
- (5) submit periodic reports or statements of account that are needed;
- (6) issue a statement of account to an employee not less than once each year showing the amount of the employee's contributions to the applicable plan in the system;
- (7) formulate and recommend to the commissioner of administration regulations to govern the operation of the system;
- (8) as soon as possible after the close of each fiscal year, and not later than six months after the close of each fiscal year, send to the governor and the legislature an annual statement on the operations of each of the plans in the system containing
  - (A) a balance sheet;
  - (B) a statement of income and expenditures for the year;
  - (C) a report on valuation of trust fund assets;
  - (D) a summary of assets held in the trust fund listed by the categories of investment, as provided by the Alaska Retirement Management Board;
  - (E) other statistical financial data that are necessary for proper understanding of the financial condition of the system as a whole and each plan in the system and the result of its operations;
- (9) engage an independent certified public accountant to conduct an annual audit of each plan's accounts and the annual report of the system's financial condition and activity;
- (10) report to the Legislative Budget and Audit Committee concerning the condition and administration of each plan and distribute the report to the members of each plan in the system;

(11) publish an information handbook for each plan in the system at intervals that the administrator considers appropriate;

(12) meet at least annually with the board to review the condition and management of the retirement systems and to review significant changes to policies, regulations or benefits; and

(13) do whatever else may be necessary to carry out the purposes of each plan in the system.

(b) The administrator is authorized to charge uniform fees to members' accounts to cover the ongoing cost of operating each plan in the system.

(c) The administrator is authorized to contract with public and private entities to provide record keeping, benefits payments, and other functions necessary for the administration of each plan in the system.

History - (Sec. 81 ch 9 FSSLA 2005)

### **SEC. 39.35.005. REGULATIONS.**

(a) Regulations adopted by the commissioner of administration under this chapter relate to the internal management of state agencies, and the adoption of these regulations is not subject to AS 44.62 (Administrative Procedure Act).

(b) Notwithstanding (a) of this section, a regulation adopted under this chapter shall be published in the Alaska Administrative Register and Code for informational purposes.

(c) Each regulation adopted under this chapter must conform to the style and format requirements of the drafting manual for administrative regulations that is published under AS 44.62.050.

(d) At least 30 days before the adoption, amendment, or repeal of a regulation under this chapter, the commissioner shall provide notice of the action that is being considered. The notice shall be

(1) posted in public buildings throughout the state;

(2) published in one or more newspapers of general circulation in each judicial district of the state;

(3) mailed to each person or group that has filed a request for notice of proposed action with the commissioner; and

(4) furnished to each member of the legislature and to the Legislative Affairs Agency.

(e) Failure to mail notice to a person as required under (d)(3) of this section does not invalidate an action taken by the commissioner.

(f) The commissioner may hold a public hearing on a proposed regulation.

(g) A regulation adopted under this chapter takes effect 30 days after adoption by the commissioner.

(h) Notwithstanding the other provisions of this section, a regulation may be adopted, amended, or repealed, effective immediately, as an emergency regulation by the commissioner. For an emergency regulation to be effective, the commissioner must find that the adoption, amendment, or repeal of the regulation is necessary for the immediate preservation of the orderly operation of the system. The commissioner shall, within 10 days after adoption of an emergency regulation, give notice of the adoption under (d) of this section.

(i) In this section, “regulation” has the meaning given in AS 44.62.640(a).

History - (Sec. 81 ch 9 FSSLA 2005)

### **SEC. 39.35.006. APPEALS.**

An employer, member, annuitant, or beneficiary may appeal a decision made by the administrator to the office of administrative hearings established under AS 44.64. An aggrieved party may appeal a final decision to the superior court.

History - (Sec. 81 ch 9 FSSLA 2005)

### **SEC. 39.35.007. INVESTMENT MANAGEMENT OF RETIREMENT SYSTEM FUNDS.**

The Alaska Retirement Management Board established under AS 37.10.210 is the fiduciary of the system funds.

History - (Sec. 81 ch 9 FSSLA 2005)

### **SEC. 39.35.008. DEFINITIONS.**

In AS 39.35.001 - 39.35.008,

(1) “commissioner” means the commissioner of administration;

(2) “plan” means the retirement plan established in AS 39.35.095 - 39.35.680 or the retirement plan established in AS 39.35.700 - 39.35.990;

(3) “system” means all retirement plans established under the public employees’ retirement system.

History - (Sec. 81, 82 ch 9 FSSLA 2005)

Amendment Notes - The 2005 amendment by Sec. 82, ch. 9, FSSLA 2005, effective July 1, 2006, added “or the retirement plan established in AS 39.35.700 - 39.35.990” at the end of paragraph (2).

**SEC. 39.35.010. PURPOSE AND EFFECTIVE DATE; FEDERAL QUALIFICATION REQUIREMENTS. [REPEALED, SEC. 132 CH 9 FSSLA 2005].**

Repealed or Renumbered

**SEC. 39.35.011. EXCLUSIVE BENEFIT.**

The corpus or income of the assets held in trust as required by the plan may not be diverted to or used for other than the exclusive benefit of the members or their beneficiaries.

History - (Sec. 28 ch 59 SLA 2002)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, “plan” was substituted for “system” in this section.

**SEC. 39.35.020. - 39.35.047L ADMINISTRATION; PUBLIC EMPLOYEES RETIREMENT BOARD; POWERS AND DUTIES OF BOARD; REGULATIONS; HEARINGS. [REPEALED, SEC. 132 CH 9 FSSLA 2005].**

Repealed or Renumbered

**SEC. 39.35.050. ADMINISTRATOR. [REPEALED, SEC. 50 CH 13 SLA 1980 AND SEC. 116(A) CH 20 SLA 2007].**

Repealed or Renumbered

**SEC. 39.35.060. DUTIES OF THE ADMINISTRATOR. [REPEALED, SEC. 132 CH 9 FSSLA 2005].**

Repealed or Renumbered

**SEC. 39.35.070. DUTY OF EMPLOYERS TO FURNISH RECORDS.**

Each employer shall furnish the administrator with records concerning the periods of service, dates of birth, compensation, new entrants into service, death, withdrawals, and other employee data necessary for the proper and effective operation of the system.

History - (Sec. 33 b ch 143 SLA 1960; am Sec. 7 ch 1 SLA 1974)

**SEC. 39.35.080. , 39.35.090L DUTIES OF THE ALASKA STATE  
PENSION INVESTMENT BOARD; ATTORNEY GENERAL.  
[REPEALED, SEC. 132 CH 9 FSSLA 2005].**

Repealed or Renumbered

**ARTICLE 02. PUBLIC EMPLOYEES' DEFINED  
BENEFIT RETIREMENT PLAN**

**SEC. 39.35.095. APPLICABILITY OF AS 39.35.095 - 39.35.680.**

The following provisions of this chapter apply only to members first hired before July 1, 2006: AS 39.35.095 - 39.35.680.

History - (Sec. 83 ch 9 FSSLA 2005)

Article Notes - Legislative History Reports. For governor's transmittal letter for ch. 13, SLA 2008 (SB 125) proposing changes to the defined benefit plan of the Public Employees' Retirement System to make it into an employer cost-sharing program, see 2007 Senate Journal 570 - 572.

**SEC. 39.35.100. ACCOUNTING.**

(a) The commissioner shall establish and maintain an adequate system of accounts and records for the plan. The accounts and records shall be integrated with the accounts, records, and procedures of the employers to the end that they operate most effectively and at minimum expense, and that duplication of records and accounts is avoided.

(b) An individual account shall be maintained for each employee to record the amount of the employee's mandatory contributions collected under AS 39.35.160(a). As of the last day of each calendar year and of each fiscal year, this account shall be credited with interest by applying the prescribed rate of interest, as determined by the board, to the balance in the account as of that date. When the employee is appointed to retirement, the amount held

in the individual account shall be used first to fully finance the benefits paid. Once this account has been exhausted, the plan shall fully finance the benefits paid that were not financed by the employee's individual account.

(c) An individual account shall be maintained for each employee to record the amount of the employee's voluntary contributions to an employee savings account under AS 39.35.180. As of the last day of each calendar year and of each fiscal year, this account shall be credited with interest by applying the prescribed rate of interest, as determined by the board, to the balance in the account as of that date. Amounts that, before termination of employment, are withdrawn by an employee from the employee's savings account shall be charged to that account. When an employee is appointed to retirement, the amount held in the employee's savings account shall be paid in accordance with AS 39.35.395.

History - (Sec. 36 ch 143 SLA 1960; am Sec. 1, 2 ch 35 SLA 1969; am Sec. 2, 3 ch 109 SLA 1970; am Sec. 8 - 10 ch 1 SLA 1974; am Sec. 18 ch 128 SLA 1977; am Sec. 42, 43 ch 137 SLA 1982; am Sec. 84 ch 9 FSSLA 2005; am Sec. 8 ch 13 SLA 2008; am Sec. 10, 11 ch 35 SLA 2008)

Amendment Notes - The 2005 amendment, effective July 28, 2005, in paragraphs (1) and (2) of subsection (b) deleted "one half of" preceding "the prescribed rate" and inserted "as determined by the board"; and substituted "plan" for "system" in one place in paragraph (3) and two places in paragraph (4).

The first 2008 amendment, effective July 1, 2008, rewrote this section.

The second 2008 amendment, effective May 23, 2008, inserted "made by or on behalf" in the first sentence of paragraph (b)(3), added "Except as provided in AS 39.35.270(d)" at the beginning of the second and third sentences of paragraph (b)(3) and the beginning of the second sentence of paragraph (b) (4), and added subsections (d) and (e).

Editors Notes - Under Sec. 10 and 11, ch. 35, SLA 2008, from May 23, 2008 until July 1, 2008, former (b) (3) and (4) of this section contained an exception for AS 39.35.255(f) (which was enacted as AS 39.35.270(d)).

## **SEC. 39.35.110. INVESTMENTS. [REPEALED, SEC. 33 CH 141 SLA 1988].**

Repealed or Renumbered

**SEC. 39.35.115. DEFINED BENEFIT RETIREMENT PLAN;  
REVERSION ON TERMINATION.**

(a) A defined benefit retirement plan for employees of the state, political subdivisions, and public organizations is created. The plan becomes effective January 1, 1961, at which time contributions by the employers and members begin.

(b) The retirement plan established by AS 39.35.095 - 39.35.680 is intended to qualify under 26 U.S.C. 401(a) and 414(d) (Internal Revenue Code) as a qualified retirement plan established and maintained by the state for its employees and for the employees of political subdivisions, public corporations, and public organizations of the state, and for the employees of other employers whose participation is authorized by AS 39.35.095 - 39.35.680 and who participate in this plan.

(c) An amendment to AS 39.35.095 - 39.35.680 does not provide a person with a vested right to a benefit if the Internal Revenue Service determines that the amendment will result in disqualification of the plan under the Internal Revenue Code.

(d) The retirement plan established by AS 39.35.095 - 39.35.680 is a joint contributory plan.

(e) If, upon termination of the plan, all liabilities are satisfied, any excess assets shall revert to the employers as determined by the administrator, subject to the approval of the termination by the Internal Revenue Service.

History - Sec. 85 ch 9 FSSLA 2005; am Sec. 58 ch 20 SLA 2007)

Amendment Notes - The 2007 amendment, effective June 7, 2007, added subsections (d) and (e).

History Reports - For governor's transmittal letter for ch. 20, SLA 2007 (SB 123), proposing needed corrections and clarifications of statutes enacted as part of the 2005 legislation establishing defined contributions retirement plans and making related amendments to defined benefit retirement plans, see 2007 Senate Journal 567 - 570.

## **ARTICLE 03. MEMBERSHIP**

### **SEC. 39.35.120. COMMENCEMENT OF PARTICIPATION.**

(a) An employee of the state shall be included in this plan upon commencement of employment with the state, or on January 1, 1961, whichever is later. Unless an employee participates in a university retirement program under AS 14.40.661 - 14.40.799, an employee of a political subdivision or public organization that becomes an employer shall be included in the plan on the effective date of the employer's participation or the date of the employee's commencement of employment with the employer, whichever is later.

(b) Inclusion in the plan is a condition of employment for an employee except as otherwise provided for

(1) an elected official;

(2) [Repealed by Sec. 12 ch 57 SLA 2001, as amended by Sec. 10 ch 50 SLA 2005, effective July 1, 2009].

(3) an employee of the university who participates in a university retirement program under AS 14.40.661 - 14.40.799.

History - (Sec. 4 ch 143 SLA 1960; am Sec. 1 ch 155 SLA 1966; am Sec. 28 ch 13 SLA 1980; am Sec. 27 ch 146 SLA 1980; am Sec. 5 ch 104 SLA 1989; am Sec. 7, 12 ch 57 SLA 2001; am Sec. 7 ch 97 SLA 2001; am Sec. 21 ch 92 SLA 2004; am Sec. 86 ch 9 FSSLA 2005)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, "plan" was substituted for "system" in this section.

Cross References - For the intent of the legislature concerning the amendments to this section made by ch. 97, SLA 2001, see Sec. 1, ch. 97, SLA 2001 in the 2001 Temporary and Special Acts.

Amendment Notes - The first 2001 amendment, by Sec. 7, ch. 57, SLA 2001, effective July 1, 2001, in subsection (b) added the paragraph designations and paragraph (2) and made a stylistic change.

The second 2001 amendment, by Sec. 12, ch. 57, SLA 2001, as amended by sec. 6, ch. 15, SLA 2003, and by secs, 10 and 21, ch. 50, SLA 2005, effective July 1, 2009, repealed paragraph (2) of subsection (b).

The third 2001 amendment, effective March 1, 2002, added the last sentence in subsection (a), and in subsection (b), added the paragraph designations and added paragraph (3).

The 2004 amendment, effective June 26, 2004, deleted the third sentence of subsection (a) and deleted paragraph (b)(4), both relating to a village public safety officer.

The 2005 amendment, effective July 28, 2005, substituted “participates in a university retirement program” for “has elected to participate in the optional university retirement program” in subsection (a) and paragraph (b)(3).

Editors Notes - Section 13, ch. 97, SLA 2001 provides that the amendments to this section made by ch. 97, SLA 2001 do “not modify the terms of a contract between the state and a nonprofit regional corporation in existence on the effective date of this Act.” The effective date of Sec. 7, ch. 97, SLA 2001, which amended this section, was March 1, 2002.

AG Opinions - Given subsection (b) of this section and AS 39.35.170, which make inclusion in the public employees retirement system (AS 39.35) a condition of employment for state employees and contributions to it mandatory, the conclusion is that the legislature intended the statutory provisions of the public employees retirement system to apply to all state employees, and benefits under the public employees retirement system may not be negotiated under the Public Employment Relations Act (AS 23.40.070 - 23.40.260). January 23, 1978 Op. Att’y Gen.

Decisions - Cited in *Holmberg v. State*, Div. of Risk Mgt., 796 P.2d 823 (Alaska 1990).

## **SEC. 39.35.125. PARTICIPATION OF ELECTED OFFICIALS.**

(a) An elected official of the state or of a political subdivision of the state if the political subdivision has elected under AS 39.35.600 - 39.35.650 to designate elected officials in the classifications of employees entitled to participate in the plan is included in the plan unless the official files a written waiver of coverage with the administrator. A waiver under this subsection waives coverage of future employment as an elected official, regardless of any change of employer. An elected official may file a waiver under this subsection at any time after election to office, including the period before taking the oath of office. An elected official may revoke a waiver under this subsection by filing a written revocation with the administrator. A revocation under this subsection operates prospectively only, and the elected official may not receive credited service for service as an elected official while the waiver was in effect. There is no limit on the number of times an elected official may file a waiver or revocation under this subsection.

(b) Service as an elected official before January 1, 1981, with an employer may be included retroactively as credited service with the plan if the elected official or former elected official makes retroactive contributions equal to what the official would have made if the elected official or former elected official had been included in the plan when the oath of office as an elected official was

taken, plus accrued interest from July 1, 1984. The rate used to calculate the retroactive contributions may not be less than the rate in effect on January 1, 1961. An elected official or former elected official may not receive credited service under this subsection for any period in which the elected official or former elected official was receiving a retirement benefit from the plan. An elected official or former elected official receiving a retirement benefit from the plan on January 1, 1981, is not eligible to claim credited service under this subsection unless the elected official or former elected official is reemployed as an active member. Service as an elected official with an employer constitutes employment as an active member as long as a waiver of coverage under (a) of this section is not in effect.

(c) An elected official included in the plan and that person's employer are liable for contributions whenever that person is an elected official unless a waiver of coverage under (a) of this section is in effect.

[AS 39.35.6159(a) When an employer requests to amend its participation agreement to add an elected official, the plan may cover that elected official only if the employer pays compensation to the elected official, for services as an elected official, in the amount of at least \$2,001 a month.]

History - (Sec. 2 ch 155 SLA 1966; am Sec. 3 ch 159 SLA 1972; am Sec. 1 ch 254 SLA 1976; am Sec. 19 ch 128 SLA 1977; am Sec. 8, 9 ch 82 SLA 1979; am Sec. 28 ch 146 SLA 1980; am Sec. 44 ch 137 SLA 1982; am Sec. 1 ch 170 SLA 1984; am Sec. 87 ch 21 SLA 2000; am Sec. 34 ch 68 SLA 2000; am Sec. 9 ch 13 SLA 2008)

Revisors Notes - In 2005, at the end of the first sentence of subsection (b) of this section, "plans" was substituted for "plan" to correct a manifest error.

Amendment Notes - The 2008 amendment, effective July 1, 2008, substituted "AS 39.35.600 - 39.35.650" for "AS 39.35.550 - AS 39.35.650" in the first sentence of subsection (a).

Editors Notes - Section 46, ch. 146, SLA 1980 provides: "AS 39.35.125 (a), as reenacted in Sec. 28 of this Act, applies to an elected official holding office on or after January 1, 1981, even though he may have assumed office before that date."

History Reports - For purpose of the amendment made by sec. 87, ch. 21, SLA 2000 (CSHB 435(JUD)), see 2000 House Journal Supp. No. 10 (July 19, 2000).

Decisions - Relationship between elected officials and state. - This section clearly contemplates an employer-employee relationship between elected officials and the state in the context of a retirement system. State ex rel. Hammond v. Allen, 625 P.2d 844 (Alaska 1981).

Rights of elected officials in retirement systems. - There is no valid basis upon which to distinguish the rights of elected officials in the elected public officers retirement system from their rights in the public employees' retirement system in the context of Alaska Const., art. XII, Sec. 7. State ex rel. Hammond v. Allen, 625 P.2d 844 (Alaska 1981).

**SEC. 39.35.127. PARTICIPATION OF VILLAGE PUBLIC SAFETY OFFICERS. [REPEALED, SEC. 30 CH 92 SLA 2004].**

Repealed or Renumbered

**SEC. 39.35.130. TERMINATION OF PARTICIPATION. [REPEALED, SEC. 55 CH 128 SLA 1977].**

Repealed or Renumbered

**SEC. 39.35.131. MEMBERSHIP IN TEACHERS' AND PUBLIC EMPLOYEES' RETIREMENT SYSTEMS.**

(a) A person who is employed at least half-time in the plan during the same period that the person is employed at least half-time in a position in the teachers' retirement plan under AS 14.25.009 - 14.25.220 shall receive credited service under each plan for half-time employment. However, the amount of credited service a person receives under the plan during a school year may not exceed the amount necessary, when added to the amount of credited service earned during the school year under the teachers' retirement plan, to equal one year of credited service.

(b) A person who was employed at least half-time in a position in the teachers' retirement plan under AS 14.25.009 - 14.25.220 in the same period that the person was employed at least half-time in a position in this plan may claim credited service in both plans for employment before May 31, 1989. To obtain this credited service, the person shall claim the service and verify the period of half-time employment. When eligibility for half-time service credit has been established, an indebtedness shall be determined to the retirement plan in which the person did not participate. The amount of the indebtedness is the full actuarial cost of providing benefits for the credited service claimed. Interest as prescribed by regulation accrues on that indebtedness beginning on the later of July 1, 1989, or the date on which the member is first eligible to claim the service. Any outstanding indebtedness existing at the time the person retires will require an actuarial adjustment to the benefits payable based on that service.

History - (Sec. 2 ch 58 SLA 1989; am Sec. 87 ch 9 FSSLA 2005)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, “plan” was substituted for “system” in this section.

Amendment Notes - The 2005 amendment, effective July 28, 2005, throughout the section substituted “plan” for “system” and updated section references.

**SEC. 39.35.140. RE-EMPLOYMENT OF FORMER EMPLOYEES.**  
**[REPEALED, SEC. 55 CH 128 SLA 1977].**

Repealed or Renumbered

**SEC. 39.35.150. RE-EMPLOYMENT OF RETIRED EMPLOYEES.**

(a) If a retired employee subsequently becomes an active member, benefit payments may not be made during the period of re-employment. During the period of re-employment, deductions from the employee’s salary shall be made in accordance with AS 39.35.160. Upon subsequent retirement, the retired employee is entitled to receive an additional pension based on the credited service and the average monthly compensation earned during the period of re-employment in accordance with AS 39.35.370.

(b) [Repealed by Sec. 12 ch 57 SLA 2001, as amended by Sec. 6 ch 15 SLA 2003 and Sec. 10 ch 50 SLA 2005, effective July 1, 2009].

(c) [Repealed, Sec. 12 ch 57 SLA 2001, as amended by Sec. 6 ch 15 SLA 2003 and Sec. 10 ch 50 SLA 2005, effective July 1, 2009].

(d) If the initial benefit payments to which the retired member is eligible have been reduced because the member retired early under AS 39.35.370(b) or increased because the member elected to receive a level income option benefit under former AS 39.35.460, the member shall also receive an incremental benefit based on the amount of the reduction imposed by AS 39.35.370(b) or the increase under former AS 39.35.460 on the first benefit and the length of time that the employee was reemployed and not receiving retirement benefits. The amount of the incremental benefit is equal to the difference between the normal retirement benefit to which the member would have been entitled had the member taken a normal retirement and the early retirement benefit or benefit under the level income option that the member has been receiving based on the member’s initial period of employment multiplied by the total number of months that the member did not receive retirement benefits because of reemployment and that amount actuarially adjusted to be paid over the expected lifetime of the member. In the case of a member who selected benefits under the level income option, the total number of months may not include any month in which the member was 65 years of age or older.

(e) A member who retired under AS 39.35.370(a) and participated in a retirement incentive program under ch. 26, SLA 1986; ch. 89, SLA 1989; ch. 65, SLA 1996; ch. 4, FSSLA 1996; or ch. 92, SLA 1997, who is subsequently reemployed as a commissioner may become an active member without losing the incentive credit provided under the applicable retirement incentive plan and is not subject to any related reemployment indebtedness.

(f) [Repealed, Sec. 12 ch 50 SLA 2005].

(g) [Repealed, Sec. 12 ch 50 SLA 2005].

(h) [Repealed, Sec. 12 ch 50 SLA 2005].

History - (Sec. 7 ch 143 SLA 1960; am Sec. 4 ch 109 SLA 1970; am Sec. 4 ch 159 SLA 1972; am Sec. 11 ch 1 SLA 1974; am Sec. 20 ch 128 SLA 1977; am Sec. 35 ch 68 SLA 2000; am Sec. 8, 9, 12 ch 57 SLA 2001; am Sec. 4 - 6 ch 15 SLA 2003; am Sec. 7, 8, 12 ch 50 SLA 2005)

Cross References - For legislative findings relating to the 2005 amendment of subsection (b) and enactment of subsections (f) - (h), see sec. 1, ch. 50, SLA 2005 in the 2005 Temporary and Special Acts. For provision applicable to a retired teacher who was rehired and made an election under (b) or (e) of this section before November 3, 2004, see Sec. 15(a) and (c), ch. 50, SLA 2005. For provision applicable to a retired teacher who was rehired and made an election under (b) or (e) of this section on or after November 3, 2004, see Sec. 15(b) and (c), ch. 50, SLA 2005.

Amendment Notes - The first 2001 amendment, by Sec. 8, ch. 57, SLA 2001, effective July 1, 2001, added the subsection designations and subsections (b) and (c); and, in subsection (a), added “unless the member makes an election under (b) of this section” at the end of the first sentence.

The second 2001 amendment, by Sec. 9 and 12, ch. 57, SLA 2001, as amended by sec. 6, ch. 15, SLA 2003, and by secs. 10, 17, and 21, ch. 50, SLA 2005, effective July 1, 2009, repealed subsections (b) and (c), and deleted “unless the member makes an election under (b) of this section” following “re-employment” at the end of the first sentence of subsection (a).

The 2003 amendment, effective July 31, 2003, added “unless the member is reemployed as a commissioner” at the end of subsection (b) and added subsection (e).

The 2005 amendment, effective July 1, 2005, added the third through fifth sentences in subsection (b) and added subsections (f)-(h); and, effective July 1, 2009, repeals subsections (f)-(h).

History Reports - For governor’s transmittal letter for ch. 15, SLA 2003 (HB 140), see 2003 House Journal 340 - 341.

AG Opinions - A retired state employee was considered “re-employed” by the state on a “regular full-time basis” if he were elected to the state legislature. 1965 Op. Att’y Gen., No. 4, issued prior to the 1977 amendment. But see AS 39.35.125.

A former territorial employee, retired under the Public Employees Retirement Act of 1949, was entitled to receive both his salary as a legislator and his retirement benefits while he served in the state legislature. 1965 Op. Att’y Gen., No. 4, issued prior to the 1977 amendment.

Any Public Employee Retirement System (PERS) member who became a member after July 1, 1977, who retires, returns to work, and re-retires, will receive two pensions, as calculated under this section. Any PERS member who became a member prior to July 1, 1977, will receive pension benefits as calculated under the pre-1977 version of this section. Sept. 12, 1999, Op Att’y Gen.

Decisions -Recapture not an “adjustment” under earlier provisions of AS 39.35.520. - Public Employees’ Retirement System Board’s recalculation of member benefits under earlier provisions of AS 39.35.150(a) was not an “adjustment” triggering application of earlier requirements of AS 39.35.520(b), which prohibits downward adjustments under certain circumstances. *Alford v. State*, 195 P.3d 118 (Alaska 2008).

Application of recapture requirement of earlier version of subsection (b) to early retirees’ benefits from their first round of employment with the state did not violate the anti-diminution provision of Alaska Const., art. XII, Sec. 7, because retirees’ net benefit from both rounds of employment increased, although their benefit from their first round of employment decreased. *Alford v. State*, 195 P.3d 118 (Alaska 2008).

## **SEC. 39.35.153. ARMY AND AIR NATIONAL GUARD EMPLOYEES.**

A regular full-time civilian employee of the Alaska Army National Guard and Air National Guard, whose entire salary is paid from allotted federal funds, is included in this system, if the federal or state government pays the employer’s contributions. If the amount that the federal government may legally contribute to the system is lower than the required employer’s contribution, the state government shall contribute the difference. If the employer’s contributions are not paid when due, service credit for the period of delinquency may not be granted until the contributions are paid.

History - (Sec. 1 ch 53 SLA 1965)

**SEC. 39.35.154. NORTH PACIFIC FISHERY MANAGEMENT  
COUNCIL EMPLOYEES.**

An employee of the North Pacific Fishery Management Council appointed under 16 U.S.C. 1852(f)(1) (Sec. 302(f)(1) of P.L. 94-265), whose compensation is paid from allotted federal funds, is included in the system if the council pays the employer's contributions. If the employer's contributions are not paid when due, credited service for the period of delinquency may not be granted until the contributions are paid.

History - (Sec. 1 ch 86 SLA 1977)

History Reports - For report on ch. 86, SLA 1977 (CSSB 135), see 1977 House Journal, p. 1206; 1977 Senate Journal, p. 535.

**SEC. 39.35.155. AND 39.35.157. FORMER MAGISTRATES; TOKYO  
OFFICE EMPLOYEES. [REPEALED, SEC. 60 CH 21  
SLA 1985].**

Repealed or Renumbered

**SEC. 39.35.158. ADMINISTRATIVE DIRECTOR OF COURTS.**

An administrative director of the Alaska court system who withdraws from the judicial retirement system under AS 22.25.012 is eligible for membership in the plan and shall receive credited service in the plan for service rendered as administrative director. To be eligible for membership in the plan under this subsection, the administrative director must contribute to the plan

(1) the amount the director would have contributed if the director had been a member during the director's period of membership in the judicial retirement system; and

(2) any contributions for services as administrative director refunded by the plan at the time the director became a member of the judicial retirement system.

History - (Sec. 30 ch 146 SLA 1980; am Sec. 88 ch 9 FSSLA 2005)

Amendment Notes - The 2005 amendment, effective July 28, 2005, substituted "plan" for "system" throughout the section.

## **ARTICLE 04. CONTRIBUTIONS BY EMPLOYEES**

### **SEC. 39.35.160. AMOUNT OF EMPLOYEE CONTRIBUTIONS.**

(a) Beginning January 1, 1987, each peace officer or fire fighter shall contribute to the plan an amount equal to seven and one-half percent of the peace officer's or fire fighter's compensation. Except as provided in (d) of this section, beginning January 1, 1987, each other employee shall contribute to the plan an amount equal to six and three-quarters percent of the employee's compensation. The contributions shall be deducted by the employer at the end of each payroll period. The contributions shall be deducted from employee compensation before computation of applicable federal taxes, and the contributions shall be treated as employer contributions under 26 U.S.C. 414(h)(2). A member may not have the option of making the payroll deduction directly instead of having the contribution picked up by the employer.

(b) [Repealed, Sec. 6 ch 135 SLA 1980 and Sec. 39 ch 146 SLA 1980].

(c) An employee who has made an election under AS 39.35.300(c) or 39.35.310(c) to have the employee's years of service as a noncertificated employee of a state boarding school, of a school district or regional educational attendance area, of the special education service agency, or of the Alaska Vocational Technical Center determined by reference to AS 14.25.220 shall pay a contribution surcharge for that service. The amount of the surcharge is the difference between the amount the employer would have had to contribute under AS 39.35.255 - 39.35.290 for the employee when treating the employee's credited service as service earned under AS 39.35.300(c) or 39.35.310(c) less the amount the employer would have had to contribute under AS 39.35.255 - 39.35.290 without treating the employee's credited service as service earned under AS 39.35.300(c) or 39.35.310(c).

(d) The employer of a member who is employed by a school district, a regional educational attendance area, or a state boarding school who is assaulted while on the job and who, as a result of a physical injury from the assault, is placed on unpaid leave of absence or is receiving benefits under AS 23.30, shall pay the member's contributions under this section while the member is, as a result of the on-the-job injury, on unpaid leave or receiving the benefits under AS 23.30.

History - (Sec. 8 a ch 143 SLA 1960; am Sec. 2 ch 235 SLA 1968; am Sec. 3 ch 35 SLA 1969; am Sec. 5 ch 109 SLA 1970; am Sec. 5 ch 159 SLA 1972; am Sec. 2 ch 58 SLA 1979; Sec. 6 ch 135 SLA 1980; am Sec. 39 ch 146 SLA 1980; am Sec. 15 ch 82 SLA 1986; am Sec. 1 ch 22 SLA 1999; am Sec. 4, 5 ch 52 SLA 2000; am Sec. 36 ch 68 SLA 2000; am Sec. 30 ch 59 SLA 2002; am Sec. 10 ch 13 SLA 2008)

Revisors Notes - In 1989, the term “fire fighter” was substituted for “fireman” in this section under Sec. 60, ch. 50, SLA 1989.

Subsection (d) was enacted as (c). Relettered in 2000, at which time a conforming amendment was made in subsection (a).

Under sec. 144, ch. 9, FSSLA 2005, “plan” was substituted for “system” in this section.

Cross References - For a provision relating to ch. 52, SLA 2000, which amended subsection (a) and enacted subsection (d), see sec. 7, ch. 52, SLA 2000 in the 2000 Temporary and Special Acts.

Amendment Notes - The 2002 amendment, effective June 20, 2002, added the last sentence in subsection (a).

The 2008 amendment, effective July 1, 2008, substituted “AS 39.35.255 - 39.35.290” for “AS 29.35.250 - 39.35.290” two times in the last sentence of subsection (c).

Editors Notes - Section 2, ch. 123, SLA 1976, and Sec. 1, ch. 58, SLA 1979, contained amendments to subsection (a) of this section. Both Acts provided that the amendments take effect only if approved by a majority of the votes cast in special elections conducted by the Department of Administration among the active members of the Public Employees’ Retirement System. The amendments were rejected.

Decisions - Cited in *Holmberg v. State, Div. of Risk Mgt.*, 796 P.2d 823 (Alaska 1990).

Article Notes - Legislative History Reports. For governor’s transmittal letter for ch. 20, SLA 2007 (SB 123), proposing needed corrections and clarifications of statutes enacted as part of the 2005 legislation establishing defined contributions retirement plans and making related amendments to defined benefit retirement plans, see 2007 Senate Journal 567 - 570.

## **SEC. 39.35.165. PURCHASE OF CREDITED SERVICE.**

(a) An employee who is eligible to purchase credited service under AS 39.35.310, 39.35.330, 39.35.340, 39.35.342, 39.35.345, 39.35.350 (**repeals July 1, 2010**), 39.35.360, or 39.35.370, a member who is eligible to purchase credited service under AS 39.35.375, or an elected public official who is eligible to purchase credited service under AS 39.35.381 is an employee for purposes of this section. An employee may, in lieu of making payments directly to the plan, elect to have the employee’s employer make payments as provided in this section.

(b) An employee may elect to have the employer make payments for all or any portion of the amounts payable for the employee's purchase of credited service through a salary reduction program as follows:

(1) the amounts paid under a salary reduction program are in lieu of contributions by the employee making the election; the electing employee's salary or other compensation shall be reduced by the amount paid by the employer under this subsection;

(2) the employee shall make an irrevocable election under this section to purchase credited service as permitted in AS 39.35.310, 39.35.330, 39.35.340, 39.35.342, 39.35.345, 39.35.350 (**repeals July 1, 2010**), 39.35.360, 39.35.370, 39.35.375, or 39.35.381 and before the employee's termination of employment; the irrevocable election must specify the number of payroll periods that deductions will be made from the employee's compensation and the dollar amount of deductions for each payroll period during the specified number of payroll periods; the deductions made under this paragraph cease upon the earlier of the member's termination of employment with the employer or the member's death; amounts paid by an employer under (f) of this section may not be applied toward the payment of the dollar amount of the deductions representing the portion of the credited service that is being purchased by the member through payroll deduction in accordance with the member's irrevocable election under this subsection;

(3) amounts paid by an employer under this subsection shall be treated as employer contributions for the purpose of determining tax treatment under the Internal Revenue Code; the amounts paid by the employer under this section may not be included in the member's gross income for income tax purposes until those amounts are distributed by refund or retirement benefit payments.

(c) Unless otherwise provided, employee contributions paid by the employer under this section are treated for all other purposes under the plan in the same manner and to the same extent as employee contributions that are not paid by an employer under this section and AS 39.35.160. The plan may assess interest or administrative charges attributable to any salary reduction election made under this section. The interest or administrative charges shall be added to the contribution that is made to the plan by the employee each payroll period, and that is paid by the employer. The interest or administrative charges may not be treated as employee contributions for any purposes under AS 39.35.095 - 39.35.680, and an employee or an employee's beneficiary does not have a right to the return of the interest or administrative charges. Interest assessed under this section shall be at the rate specified by regulations adopted by the board.

(d) For plan fiscal years beginning on or after July 1, 2001, the requirements of AS 39.35.370(i) may not be applied to reduce the amount of credited service that may be purchased under this section by an employee who first becomes an employee of the plan before July 1, 2001, to an amount that is less than the amount of credited service allowed to be purchased with the application of any of the limits prescribed in 26 U.S.C. 415.

(e) Contributions to the plan to purchase credited service do not qualify for treatment under this section if recognition of that service would cause an employee to receive a retirement benefit for the same service from the plan and from one or more other retirement plans or systems of the state.

(f) The board may accept rollover contributions from a member and direct transfers, as described in this subsection, for the purchase, in whole or in part, of credited service for the reinstatement, in whole or in part, of forfeited credited service under AS 39.35.350. A rollover contribution or transfer as described in this subsection shall also be treated as employer contributions for the purpose of determining tax treatment under the Internal Revenue Code and may be made by any one or a combination of the following methods:

(1) subject to the limitations prescribed in 26 U.S.C. 401(a)(3) and 26 U.S.C. 402(c), accepting eligible rollover distributions directly from one or more eligible retirement plans as defined by 26 U.S.C. 402(c)(8)(B);

(2) subject to the limitations prescribed in 26 U.S.C. 403(b)(13), accepting direct trustee-to-trustee transfers of all or a portion of the accounts of the member, on or after January 1, 2002, from a tax sheltered annuity described in 26 U.S.C. 403(b);

(3) subject to the limitations prescribed in 26 U.S.C. 457(e)(17), accepting direct trustee-to-trustee transfers of all or a portion of the accounts of the member, on or after January 1, 2002, from an eligible deferred compensation plan of a tax-exempt organization or a state or local government described in 26 U.S.C. 457(b);

(4) accepting direct trustee-to-trustee transfer from an account established for the benefit of the member in AS 39.30.150 - 39.30.180 (Alaska Supplemental Annuity Plan).

(g) Payments made under this section shall be applied to reduce the employee's outstanding indebtedness described in AS 39.35.310, 39.35.330, 39.35.340, 39.35.342, 39.35.345, 39.35.350, 39.35.360, 39.35.370, 39.35.375, or 39.35.381 at the time that the contributions are received by the plan.

(h) If an employee retires before all payments are made under this section, the plan shall calculate the employee's benefits based only on the payments actually made with respect to the credited service purchased.

(i) On satisfaction of the eligibility requirements of AS 39.35.310, 39.35.330, 39.35.340, 39.35.341, 39.35.345, 39.35.350, 39.35.360, 39.35.370, 39.35.375, or 39.35.381, the requirements of this section, and the administrative filing requirements specified by the board, the plan shall adjust the employee's credited service history and add any additional service credits acquired.

(j) After an election is made under this section, the election is binding on and irrevocable for the employee and the employee's employer during the employee's remaining period of current employment, and the employee does not have the option of choosing to receive the contributed amounts directly in cash.

History - (Sec. 31 ch 59 SLA 2002; am Sec. 22, 23, 32 ch 92 SLA 2004; am Sec. 59 ch 20 SLA 2007)

Delayed Amendment -. of subsections (a), (b), (g), and (i). - Under Sec. 89 - 93, ch. 9, FSSLA 2005, effective June 30, 2010, subsections (a), (b), (g), and (i) of this section will read as follows: “(a) An employee who is eligible to purchase credited service under AS 39.35.310, 39.35.330, 39.35.340, 39.35.342, 39.35.345, 39.35.360, or 39.35.370, a member who is eligible to purchase credited service under AS 39.35.375, or an elected public official who is eligible to purchase credited service under AS 39.35.381 is an employee for purposes of this section. An employee may, in lieu of making payments directly to the plan, elect to have the employee's employer make payments as provided in this section.

“(b) An employee may elect to have the employer make payments for all or any portion of the amounts payable for the employee's purchase of credited service through a salary reduction program as follows:

“(1) the amounts paid under a salary reduction program are in lieu of contributions by the employee making the election; the electing employee's salary or other compensation shall be reduced by the amount paid by the employer under this subsection;

“(2) the employee shall make an irrevocable election under this section to purchase credited service as permitted in AS 39.35.310, 39.35.330, 39.35.340, 39.35.342, 39.35.345, 39.35.360, 39.35.370, 39.35.375, or 39.35.381 and before the employee's termination of employment; the irrevocable election must specify the number of payroll periods that deductions will be made from the employee's compensation and the dollar amount of deductions for each payroll period during the specified number of payroll periods; the deductions made under this paragraph cease upon the earlier of the member's termination of employment with the employer or the member's death; amounts paid by an employer under (f) of this section may not be applied toward the payment of the dollar amount of the deductions representing the portion of the credited service that is being purchased by the member through payroll deduction in accordance with the member's irrevocable election under this subsection;

“(3) amounts paid by an employer under this subsection shall be treated as employer contributions for the purpose of determining tax treatment under the Internal Revenue Code; the amounts paid by the employer under this section may not be included in the member’s gross income for income tax purposes until those amounts are distributed by refund or retirement benefit payments.

“(g) Payments made under this section shall be applied to reduce the employee’s outstanding indebtedness described in AS 39.35.310, 39.35.330, 39.35.340, 39.35.342, 39.35.345, 39.35.360, 39.35.370, 39.35.375, or 39.35.381 at the time that the contributions are received by the plan.

“(i) On satisfaction of the eligibility requirements of AS 39.35.310, 39.35.330, 39.35.340, 39.35.341, 39.35.345, 39.35.360, 39.35.370, 39.35.375, or 39.35.381, the requirements of this section, and the administrative filing requirements specified by the commissioner, the plan shall adjust the employee’s credited service history and add any additional service credits acquired.”

of subsection (f). - Under Sec. 60 and 119, ch. 20, SLA 2007, effective July 1, 2010, subsection (f) will read as follows: “(f) The board may accept rollover contributions from a member. A rollover contribution as described in this subsection shall also be treated as employer contributions for the purpose of determining tax treatment under the Internal Revenue Code and may be made by any one or a combination of the following methods:

“(1) subject to the limitations prescribed in 26 U.S.C. 401(a)(3) and 26 U.S.C. 402(c), accepting eligible rollover distributions directly from one or more eligible retirement plans as defined by 26 U.S.C. 402(c)(8)(B);

“(2) subject to the limitations prescribed in 26 U.S.C. 403(b)(13), accepting direct trustee-to-trustee transfers of all or a portion of the accounts of the member, on or after January 1, 2002, from a tax sheltered annuity described in 26 U.S.C. 403(b);

“(3) subject to the limitations prescribed in 26 U.S.C. 457(e)(17), accepting direct trustee-to-trustee transfers of all or a portion of the accounts of the member, on or after January 1, 2002, from an eligible deferred compensation plan of a tax-exempt organization or a state or local government described in 26 U.S.C. 457(b);

“(4) accepting direct trustee-to-trustee transfer from an account established for the benefit of the member in AS 39.30.150 - 39.30.180 (Alaska Supplemental Annuity Plan).”

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, in this section “plan” was substituted for “system” and “AS 39.35.095 - 39.35.680” was substituted for “this chapter”.

Amendment Notes - The 2004 amendment, effective June 26, 2004, in subsection (b), rewrote paragraph (2) and deleted former paragraph (3), relating to the employer's payment for a portion of the employee's purchase of credited service, and made related changes; and rewrote subsection (f).

The 2007 amendment, effective June 7, 2007, substituted "eligible retirement plans as defined by 26 U.S.C. 402(c)(8)(B)" for "retirement programs of another employer that are qualified under 26 U.S.C. 401(a) or accepting rollovers directly from a member" in paragraph (f)(1), deleted former paragraph (f)(2), relating to member conduit rollover contributions, and made designation changes.

Editors Notes - Section 91, ch. 9, FSSLA 2005 was to have amended subsection (f) effective June 30, 2010, but Sec. 91, ch. 9, FSSLA 2005 was repealed by Sec. 116(c), ch. 20, SLA 2007, effective June 7, 2007.

### **SEC. 39.35.170. EMPLOYMENT CONTRIBUTIONS MANDATORY.**

Contributions of employees shall be made by payroll deductions. Every included employee shall be considered to consent to payroll deductions. It is of no consequence that a payroll deduction may cause the compensation paid in cash to an employee to be reduced below the minimum required by law. Payment of an employee's compensation, less payroll deductions, is a full and complete discharge and satisfaction of all claims and demands by the employee relating to remuneration of services during the period covered by the payment, except with respect to the benefits provided under the plan.

History - (Sec. 8 b ch 143 SLA 1960; am Sec. 3 ch 155 SLA 1966)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, "plan" was substituted for "system" in this section.

AG Opinions - Given AS 39.35.120(b) and this section, which make inclusion in the public employees retirement system (AS 39.35) a condition of employment for state employees and contributions to it mandatory, the conclusion is that the legislature intended the statutory provisions of the public employees retirement system to apply to all state employees, and benefits under the public employees retirement system may not be negotiated under the Public Employment Relations Act (AS 23.40.070 - 23.40.260). January 23, 1978 Op. Att'y Gen.

**SEC. 39.35.180. VOLUNTARY CONTRIBUTIONS BY EMPLOYEE.**

In addition to the mandatory contributions required of an employee under AS 39.35.170, an employee may, during each calendar year of participating in the plan, voluntarily contribute to an employee savings account an amount not to exceed five percent of the employee's compensation for that year.

History - Sec. 8 c ch 143 SLA 1960)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, "plan" was substituted for "system" in this section.

**SEC. 39.35.190. DISPOSITION OF CONTRIBUTIONS. [REPEALED, SEC. 55 CH 128 SLA 1977].**

Repealed or Renumbered

**SEC. 39.35.195. ROLLOVER DISTRIBUTIONS AND ROLLOVER CONTRIBUTIONS.**

(a) A distributee may elect, at the time and in the manner prescribed by the administrator, to have all or part of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in the direct rollover.

(b) Except as provided by AS 39.35.165(f), the plan does not accept contributions of eligible rollover distributions.

(c) In this section,

(1) "direct rollover" means the payment of an eligible rollover distribution by the plan to an eligible retirement plan specified by a distributee who is eligible to elect a direct rollover;

(2) "distributee" means a member or a beneficiary who is the surviving spouse of the member or an alternate payee;

(3) "eligible retirement plan" means

(A) an individual retirement account described in 26 U.S.C. 408(a);

(B) an individual retirement annuity defined in 26 U.S.C. 408(b);

(C) an annuity plan described in 26 U.S.C. 403(a);

(D) a qualified trust described in 26 U.S.C. 401(a);

(E) on and after January 1, 2002, an annuity plan described in 26 U.S.C. 403(b);

(F) on or after January 1, 2002, a governmental plan described in 26 U.S.C. 457(b); or

(G) on or after January 1, 2008, a Roth IRA described in 26 U.S.C. 408A;

(4) “eligible rollover distribution” means a distribution of all or part of a total account to a distributee, except for

(A) a distribution that is one of a series of substantially equal installments payable not less frequently than annually over the life expectancy of the distributee or the joint and last survivor life expectancy of the distributee and the distributee’s designated beneficiary, as defined in 26 U.S.C. 401(a)(9);

(B) a distribution that is one of a series of substantially equal installments payable not less frequently than annually over a specified period of 10 years or more;

(C) a distribution that is required under 26 U.S.C. 401(a)(9);

(D) the portion of any distribution that is not includable in gross income; however, a portion under this subparagraph may be transferred only to an individual retirement account or annuity described in 26 U.S.C. 408(a) or (b), to a qualified plan described in 26 U.S.C. 401(a) or 403(a), or to an annuity contract described in 26 U.S.C. 403(b), that agrees to separately account for amounts transferred, including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not includable in gross income; and

(E) other distributions that are reasonably expected to total less than \$200 during a year.

History - (Sec. 32 ch 59 SLA 2002; am Sec. 61 - 64 ch 20 SLA 2007)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, “plan” was substituted for “system” in this section.

Amendment Notes - The 2007 amendment, effective June 7, 2007, substituted “AS 39.35.165(f)” for “AS 39.35.165(f)(5)” in subsection (b), added “or an alternate payee” in paragraph (c)(2), deleted paragraph (c)(3)(B), relating to distributions made before January 1, 2002 and made related designation changes, added paragraph (c)(3)(G), added the proviso at the end of paragraph (c)(4)(D), deleted former paragraph (c)(4)(E), which provided “a distribution made on or after January 1, 2002, that is on account of hardship” and made related and stylistic changes.

**SEC. 39.35.200. REFUND UPON TERMINATION OF EMPLOYMENT  
FOR REASON OTHER THAN DEATH.**

(a) Except as provided in (c) of this section, an inactive employee, not on leave-without-pay status or layoff status, is entitled to receive a refund of the balance of the employee contribution account.

(b) An employee who is reemployed with an employer and whose contributions have not been refunded before reemployment is not eligible for a refund.

(c) An employee who is terminated and is a vested employee, deferred vested employee, or who is entitled to benefits under AS 39.35.385, and who is married at the time of application for a refund or whose rights to a refund are subject to a qualified domestic relations order is entitled to receive a refund of the balance of the employee contribution account only if the employee's present spouse and each person entitled under the order consent to the refund in writing on a form provided by the administrator. The administrator may waive written consent from the person entitled to benefits under the order if the administrator determines that the person cannot be located or for other reasons established by regulation. The administrator may waive written consent from the spouse if the administrator determines that

(1) the employee was not married to the spouse during any period of the employee's employment with an employer;

(2) the spouse has no rights under AS 39.35.095 - 39.35.680 because of the terms of a qualified domestic relations order;

(3) the spouse cannot be located;

(4) the employee and spouse have been married for less than two years and the member establishes that they are not cohabiting; or

(5) other reasons established by regulation exist.

(d) [Effective June 30, 2010]. An employee who receives a refund of contributions in accordance with this section forfeits corresponding credited service under AS 39.35.095 - 39.35.680.

History - (Sec. 9 a ch 143 SLA 1960; am Sec. 12 ch 1 SLA 1974; am Sec. 1 ch 81 SLA 1976; am Sec. 22 ch 128 SLA 1977; am Sec. 45 ch 137 SLA 1982; am Sec. 32, 33 ch 117 SLA 1986; am Sec. 24 ch 92 SLA 2004; am Sec. 94 ch 9 FSSLA 2005)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, "AS 39.35.095 - 39.35.680" was substituted for "this chapter" in this section.

Amendment Notes - The 2004 amendment, effective June 26, 2004, deleted the first sentence of subsection (b), relating to the termination of employment of an employee with credited service of less than five years.

The 2005 amendment, effective June 30, 2010, added subsection (d).

**SEC. 39.35.210. , 39.35.220. REFUNDS.**

**[REPEALED, SEC. 55 CH 128 SLA 1977].**

Repealed or Renumbered

**SEC. 39.35.230. REFUND UPON DEATH OF RETIRED EMPLOYEE.**

Upon the death of a retired employee, the employee's beneficiary shall be paid

(1) the excess of the balance in the employee contribution account of the deceased employee as of the date of the beginning of the employee's pension payments over the sum of the pension payments previously received by the employee, but this amount may not be paid if a joint and survivor option under AS 39.35.450 is in effect or if a surviving spouse's pension under AS 39.35.440 is payable; and

(2) the remaining payments purchased by the balance in the employee savings account of the deceased employee as of the date the employee retired.

History - (Sec. 9 d ch 143 SLA 1960; am Sec. 107 ch 127 SLA 1974)

**SEC. 39.35.240. WITHDRAWAL OF VOLUNTARY CONTRIBUTIONS.**

An active employee may withdraw a savings account only if the employee receives the consent of the administrator. The administrator may permit a withdrawal before termination of employment only in cases of financial need.

History - (Sec. 9 e ch 143 SLA 1960; am Sec. 23 ch 128 SLA 1977)

## ARTICLE 05. CONTRIBUTIONS BY EMPLOYERS

### SEC. 39.35.250. CALCULATION OF EMPLOYER'S CONTRIBUTION RATE; DEPOSIT OF CONTRIBUTIONS. [REPEALED, SEC. 24 CH 13 SLA 2008].

Repealed or Renumbered

Article Notes - Legislative History Reports. For governor's transmittal letter for ch. 20, SLA 2007 (SB 123), proposing needed corrections and clarifications of statutes enacted as part of the 2005 legislation establishing defined contributions retirement plans and making related amendments to defined benefit retirement plans, see 2007 Senate Journal 567 - 570.

### SEC. 39.35.255. CONTRIBUTIONS BY EMPLOYERS.

(a) Each employer shall contribute to the system every payroll period an amount calculated by applying a rate of 22 percent of the greater of the total of all base salaries

(1) paid by the employer to employees who are active members of the system, including any adjustments to contributions required by AS 39.35.520; or

(2) paid by the employer to employees who were active members of the system during the corresponding payroll period for the fiscal year ending June 30, 2008.

(b) The administrator shall allocate contributions received for full payment of

(1) the actuarially determined employer normal cost for the plan; and

(2) all contributions required by AS 39.30.370 and AS 39.35.750 for the fiscal year.

(c) If, after allocation of contributions under (b) of this section, a portion of the employer contributions remains, the administrator shall apply that remaining portion toward payment of the past service liability of the plan.

(d) Notwithstanding (a) of this section, the annual employer contribution rate may not be less than the rate sufficient to allow payment of the employer normal cost and the employer contributions required under AS 39.30.370 and AS 39.35.750.

(e) An employer of a retired member rehired under AS 39.35.150 shall include that member's base salary when calculating the contribution amount established in (a) of this section.

(f) All or a portion of the employer's share of any accrued actuarial liability to the plan may be prepaid in a lump sum. The commissioner may, by regulation, establish a minimum amount for the lump sum payment of a portion. The commissioner shall charge to the employer appropriate and reasonable costs to the plan attributable to a lump sum payment that are not greater than administrative costs applied to other employer contributions. If a lump sum payment is made, the payment shall be accounted for separately in accordance with regulations adopted by the commissioner. The regulations must provide for crediting to each lump sum payment account all earnings and losses received from investment of that payment. The lump sum payment shall be used solely to offset contributions under this section required of the employer that made the payment or on whose behalf the payment was made, taking into account earnings and losses from its investment. A lump sum payment made by or on behalf of an employer under this subsection, together with all earnings and losses from investment of that payment, may not be considered in calculating that employer's share of any discretionary payment authorized by the state that benefits multiple employers.

(g) If all or a portion of the employer's share of any accrued actuarial liability to the plan is prepaid in a lump sum under (f) of this section, the administrator shall calculate a revised employer contribution rate for that employer in recognition of that prepayment not more than 30 days following the prepayment.

(h) In this section, "normal cost" means the cost of providing the benefits expected to be credited, with respect to service, to all active members of the plan during the year beginning after the last valuation date.

History - (Sec. 11 ch 13 SLA 2008)

Revisors Notes - Subsections (f) and (g) were enacted as AS 39.35.270(d) and (e) in sec. 12, ch. 35, SLA 2008 and renumbered in 2008, at which time an internal reference in subsection (g) was conformed and the subsection enacted as (f) was relettered as (h).

Effective Date Notes - Section 27, ch. 13, SLA 2008 makes this section effective July 1, 2008.

**SEC. 39.35.260. ANNUAL CALCULATION. [REPEALED, SEC. 24 CH 13 SLA 2008].**

Repealed or Renumbered

**SEC. 39.35.270. AMOUNT OF EMPLOYER'S CONTRIBUTIONS. [REPEALED, SEC. 24 CH 13 SLA 2008].**

Repealed or Renumbered

Revisors Notes - Subsections (d) and (e) were added to this section by ch. 35, SLA 2008. Those subsections were renumbered in 2008 as AS 39.35.255(f) and (g).

**SEC. 39.35.280. ADDITIONAL STATE CONTRIBUTIONS.**

In addition to the contributions that the state is required to make under AS 39.35.255 as an employer, the state shall contribute to the plan each July 1 or, if funds are not available on July 1, as soon after July 1 as funds become available, an amount for the ensuing fiscal year that, when combined with the total employer contributions that the administrator estimates will be allocated under AS 39.35.255(c), is sufficient to pay the plan's past service liability at the contribution rate adopted by the board under AS 37.10.220 for that fiscal year.

History - (Sec. 10 d ch 143 SLA 1960; am Sec. 12 ch 13 SLA 2008)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, "plan" was substituted for "system" in this section.

Cross References - For protection of damage awards from reduction on account of contributions under this section, see AS 09.17.070(f).

Amendment Notes - The 2008 amendment, effective July 1, 2008, rewrote the section.

**SEC. 39.35.282. CONTRIBUTIONS FOR MEDICAL BENEFITS.**

Contributions made by an employer under AS 39.35.255 and 39.35.280 shall be separately computed for benefits provided by AS 39.35.535 and shall be deposited in the Alaska retiree health care trust established under AS 39.30.097(a).

History - (Sec. 13 ch 13 SLA 2008)

Effective Date Notes - Section 27, ch. 13, SLA 2008 makes this section effective July 1, 2008.

**SEC. 39.35.285. EMPLOYERS OF VILLAGE PUBLIC SAFETY OFFICERS. [REPEALED, SEC. 30 CH 92 SLA 2004].**

Repealed or Renumbered

**SEC. 39.35.290. REGULATIONS GOVERNING TRANSMITTAL OF EMPLOYER CONTRIBUTIONS.**

The commissioner shall adopt regulations to ensure the orderly and efficient transmittal of employer contributions.

History - (Sec. 10 e ch 143 SLA 1960)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, "commissioner" was substituted for "board" in this section.

## **ARTICLE 06. SERVICE**

**SEC. 39.35.300. EMPLOYMENT WITH THE STATE.**

(a) An active employee is entitled to credited service for periods of employment with the state after January 1, 1961, regardless of the office, department, division, or agency of the state in which the person was employed. For purposes of AS 39.35.095 - 39.35.680, the University of Alaska is not an office, department, division, or agency of the state. Service credit may not be granted under AS 39.35.095 - 39.35.680 for service that is creditable under the teachers' retirement system, AS 14.25, or for a person's service as a public officer, as defined in AS 39.52.960, a legislator, or a legislative director, if the service occurs on or after the date the person commits a criminal offense from which a pension forfeiture under AS 37.10.310 results.

(b) A permanent part-time employee of the state receives credited service on a pro rata basis to that which would have been earned as a permanent full-time employee.

(c) A noncertificated employee of the Alaska Vocational Technical Center or a state boarding school who first becomes a member of the plan on or after July 1, 1999, may, within 90 days after the employee first joins the plan, make an election under this subsection to have the years of service that the employee earns as a noncertificated employee determined using the table for service on or after July 1, 1969, that is set out in the definition of "year of service" in AS 14.25.220. A noncertificated employee of the Alaska Vocational Technical Center or a state boarding school who is an active member of the plan on July 1, 1999, may, within 180 days after July 1, 1999, make the election. A member of

the plan who is an inactive member on July 1, 1999, and who is later employed as a noncertificated employee of the Alaska Vocational Technical Center or a state boarding school may, within 90 days after beginning the subsequent employment, make the election. An election under this subsection is irrevocable except as provided in (d) of this section and shall be made in writing on a form provided by the administrator. The election applies to the employee's service earned for the school year in which the election is accepted by the administrator and applies to all subsequent employment as a noncertificated employee of a state boarding school, a school district or regional educational attendance area, the special education service agency, or the Alaska Vocational Technical Center. An employee who makes an election under this subsection shall pay the contribution surcharge as set out in AS 39.35.160(c).

(d) A noncertificated employee who has made an election under (c) of this section and who thereafter changes employment status from working for less than a full year, whether part-time or full time, to working for a full year, whether part-time or full-time, may, between July 1 and September 30, revoke the election and cease payment of the contribution surcharge. A revocation under this subsection is retroactive to July 1 of the school year, as defined in AS 14.25.220, in which the revocation is made.

(e) A noncertificated employee who has not made an election under (c) of this section who changes employment status from working for a full year, whether part-time or full-time, to working for less than a full year, whether part-time or full-time, may, between July 1 and September 30, make the election and begin paying the contribution surcharge. The election is retroactive to July 1 of the school year, as defined in AS 14.25.220, in which the election is made.

History - Sec. 11 ch 143 SLA 1960; am Sec. 4 ch 155 SLA 1966; am Sec. 4 ch 27 SLA 1976; am Sec. 26 ch 128 SLA 1977; am Sec. 29 ch 13 SLA 1980; am Sec. 2 ch 22 SLA 1999; am Sec. 37, 38 ch 68 SLA 2000; am Sec. 51 ch 47 SLA 2007)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, "plan" was substituted for "system" in (c) of this section and "AS 39.35.095 - 39.35.680" was substituted for "this chapter".

Amendment Notes - The 2007 amendment, effective July 10, 2007, added "or for a person's service as a public officer, as defined in AS 39.52.960, a legislator, or a legislative director, if the service occurs on or after the date the person commits a criminal offense from which a pension forfeiture under AS 37.10.310 results" at the end of subsection (a).

Article Notes - Administrative Code. For service under the defined benefit plan, see 2 AAC 35, art. 4.

**SEC. 39.35.310. EMPLOYMENT WITH OTHER EMPLOYERS.**

(a) An active employee is entitled to credited service for periods of employment with a political subdivision or a public organization beginning with the effective date of the employer's participation in the plan. The employee is also entitled to credited service for periods of employment as designated in the employer's participation agreement.

(b) A permanent part-time employee of a political subdivision or a public organization receives credited service on a basis proportionate to that which would have been earned as a permanent full-time employee.

(c) A noncertificated employee of a school district, a regional educational attendance area, or the special education service agency who first becomes a member of the plan on or after July 1, 1999, may, within 90 days after the employee first joins the plan, make an election under this subsection to have the years of service that the employee earns as a noncertificated employee determined using the table for service on or after July 1, 1969, that is set out in the definition of "year of service" in AS 14.25.220. A noncertificated employee of a school district, a regional educational attendance area, or the special education service agency who is an active member of the plan on July 1, 1999, may, within 180 days after July 1, 1999, make the election. A member of the plan who is an inactive member on July 1, 1999, and who later is employed as a noncertificated employee of a school district, a regional educational attendance area, or the special education service agency may, within 90 days after beginning the subsequent employment, make the election. An election under this subsection is irrevocable except as provided in (d) of this section and shall be made in writing on a form provided by the administrator. The election applies to the employee's service earned for the school year in which the election is accepted by the administrator and applies to all subsequent employment as a noncertificated employee of a state boarding school, a school district or regional educational attendance area, the special education service agency, or the Alaska Vocational Technical Center. An employee who makes an election under this subsection shall pay the contribution surcharge as set out in AS 39.35.160(c).

(d) A noncertificated employee who has made an election under (c) of this section and who thereafter changes employment status from working for less than a full year, whether part-time or full-time, to working for a full year, whether part-time or full-time, may, between July 1 and September 30, revoke the election and cease payment of the contribution surcharge. A revocation under this subsection is retroactive to the beginning of the school year, as defined in AS 14.25.220, in which the revocation was made.

(e) A noncertificated employee who has not made an election under (c) of this section who changes employment status from working for a full year, whether part-time or full-time, to working for less than a full year may, between July 1 and September 30, make the election and begin paying the contribution surcharge. The election is retroactive to July 1 of the school year, as defined in AS 14.25.220, in which the election was made.

History - (Sec. 12 ch 143 SLA 1960; am Sec. 27 ch 128 SLA 1977; am Sec. 30 ch 13 SLA 1980; am Sec. 3 ch 22 SLA 1999; am Sec. 39, 40 ch 68 SLA 2000)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, "plan" was substituted for "system" in this section.

**SEC. 39.35.320. TRANSFERS BETWEEN EMPLOYERS.  
[REPEALED, SEC. 55 CH 128 SLA 1977].**

Repealed or Renumbered

**SEC. 39.35.330. LEAVE OF ABSENCE.**

(a) A leave of absence with pay authorized by an employer is not considered as interrupting employment. If the employee is a permanent part-time employee, credited service shall be granted on a basis proportionate to that which would have been earned as a permanent full-time employee.

(b) A leave or leaves of absence without pay exceeding 10 accumulated working days in any calendar year or layoff status authorized by an employer shall be considered as an interruption of employment and credited service may not be granted.

(c) Notwithstanding (b) of this section, an employee who takes more than 10 days leave of absence without pay in a calendar year because the employee is unable to work due to an on-the-job injury or occupational illness for which the employee is receiving benefits under AS 23.30 may elect to receive credited service for the time on leave of absence without pay status. When an employee elects to receive credited service under this subsection, an indebtedness is established. The amount of the indebtedness is equal to the contributions that the employee would have made if the employee had been working, less the sum of contributions that the employee made for those periods of time and an amount equal to contributions that would have been made for the first 10 days of leave without pay. Interest as prescribed by regulation accrues on the indebtedness beginning on the date that the employee returns to work or terminates employment. If there is an outstanding indebtedness at the time the employee is appointed to retirement, benefits shall be actuarially adjusted.

(d) An employee of a school district, a regional educational attendance area, or a state boarding school who is assaulted while on the job and who, as a result of a physical injury from the assault, is placed on leave without pay, whether or not the employee receives workers' compensation benefits under AS 23.30 for the injury, is entitled to accrue credited service while the employee, because of the injury, is on leave-without-pay status or is receiving the benefits under AS 23.30. Entitlement to credited service under this subsection ends when the employee is eligible to receive benefits under AS 39.35.370(a) or 39.35.410(a).

History - (Sec. 14 ch 143 SLA 1960; am Sec. 28 ch 128 SLA 1977; am Sec. 1 ch 64 SLA 1987; am Sec. 24 ch 106 SLA 1988; am Sec. 6 ch 52 SLA 2000)

Cross References - For a provision relating to ch. 52, SLA 2000, which enacted subsection (d), see sec. 7, ch. 52, SLA 2000 in the 2000 Temporary and Special Acts.

### **SEC. 39.35.340. MILITARY SERVICE.**

(a) A vested employee is entitled to credited service for active military service in the armed forces of the United States, either by enlistment or induction, if the employee received a discharge under honorable conditions and is not entitled to receive retirement benefits from the United States government for the same service. The credited service allowed may not exceed an aggregate period of five years. Benefits are not payable on credited service for military service unless the employee makes retroactive contributions to the plan for the period of time that service credit is claimed. However, if the employee was in the employ of an employer on the date of entry into the armed forces and returned to the employ of an employer within 90 days after the date of discharge from military service, the employee is not required to make retroactive contributions under this plan for the period of credited service.

(b) In order to obtain credited service under this section, an employee shall make an election to do so and shall verify the period of military service. When eligibility for credited service for military service has been established, an indebtedness shall be determined as follows: (1) the employee's actual compensation, or the calculated annual compensation for those employees working less than 12 months, during the calendar year 1976 or the year in which an employee first becomes vested under AS 39.35.095 - 39.35.680, whichever is later, multiplied by (2) the number of years of military service credited under this section, and this product multiplied by (3) six percent for members who are first eligible to claim this military service before January 1, 1987, or eight and one-half percent for members who are first eligible to claim this military service on or after January 1, 1987. Interest as prescribed by regulation accrues on this indebtedness beginning on July 1, 1977, or one

year following the date a person first becomes vested, whichever is later. Any outstanding indebtedness that exists at the time a person is appointed to retirement necessitates an actuarial adjustment to the benefits payable based upon that military service.

(c) A retired employee on July 1, 1976, is eligible to receive increased benefits based upon military service as described in (a) of this section. To receive credited service for military service, a retired employee shall verify the military service. When verified, a retired employee is entitled to receive an increased benefit that shall be actuarially adjusted to reflect the employee's indebtedness for that credit. The indebtedness shall be calculated in the same manner as described in (b) of this section except that it shall be based on the average monthly compensation used in calculating the benefit. The effective date of this increased benefit is the beginning of the month following that in which eligibility has been established.

(d) The credited service granted under this section may not be used to satisfy the credited service requirements for normal retirement.

(e) A deferred vested employee on July 1, 1976, is eligible to claim credited service under (a) of this section. In order to obtain credited service under this section, such an employee shall make an election to do so and shall verify the period of military service. When eligibility for military service has been established, an indebtedness shall be determined as follows: the employee's actual compensation, or the calculated annual compensation for those employees working less than 12 months, during the calendar year the employee terminated, shall be multiplied by six percent; this product shall then be multiplied by the number of years of military service credit under this section. Interest as prescribed by regulation accrues on this indebtedness commencing July 1, 1978. Any outstanding indebtedness that exists at the time a person is appointed to retirement necessitates an actuarial adjustment to the benefits payable based upon that military service.

(f) An employee may not be credited with a period of active military service in the armed forces of the United States under this section if credit for that military service was granted under AS 14.25.009 - 14.25.220.

(g) A surviving spouse receiving or entitled to receive benefits under AS 39.35.420(b), 39.35.430, or 39.35.440 or benefits under a joint and survivor option filed under AS 39.35.450 is eligible to receive increased benefits based on military service as described in (a) of this section. To receive credited service for military service, the surviving spouse shall verify the employee's military service. When verified, the surviving spouse is entitled to receive an increased benefit which shall be actuarially adjusted to reflect the indebtedness for that credit. The indebtedness shall be calculated in the same manner as

described in (b) of this section except that it shall be based on the average monthly compensation used in calculating the benefit. Benefits payable under this subsection are effective the first day of the month following that in which eligibility has been established.

(h) The combined period of military service claimed under this section and under AS 14.25.009 - 14.25.220 may not exceed five years.

(i) Credited service under (a) of this section includes service as a

(1) foreign service officer, a foreign service reserve officer, or a limited foreign service reserve officer with the United States Department of State in Vietnam, Cambodia, or Laos from August 4, 1964, through November 7, 1975; and

(2) member of the United States Merchant Marine Service from December 7, 1941, through September 30, 1945.

History - (Sec. 15 ch 143 SLA 1960; am Sec. 1 ch 123 SLA 1976; am Sec. 29 ch 128 SLA 1977; am Sec. 6 ch 174 SLA 1978; am Sec. 31 - 36 ch 13 SLA 1980; am Sec. 46 ch 137 SLA 1982; am Sec. 16 - 18 ch 82 SLA 1986; am Sec. 97, 98 ch 9 FSSLA 2005)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, in this section “plan” was substituted for “system” and “AS 39.35.095 - 39.35.680” was substituted for “this chapter”.

Amendment Notes - The 2005 amendment, effective July 28, 2005, updated section references in subsections (f) and (h); and substituted “may not” for “cannot” in subsection (f).

Editors Notes - Section 55, ch. 82, SLA 1986, provides that notwithstanding (b) or (e) of this section, interest did not accrue on service claimed under (i) of this section “until July 1, 1987, or one year following the date on which a person first becomes vested, whichever is later.”

Section 56, ch. 82, SLA 1986, provides that “retired employees, deferred vested employees, and surviving spouses on July 1, 1986, are entitled to claim credited service or increased benefits for service claimed under (i) of this section in accordance with (c), (e) and (g) of this section.”

Section 57, ch. 82, SLA 1986 provides: “Sections 16, 22-23, 25-27, 42-45, and 50 of this Act apply only to members first hired under the Public Employees’ Retirement System after June 30, 1986.”

History Reports - For letter of intent for FCCS HB 198, which became ch. 123 SLA 1976 and amended this section, see 1976 Senate Journal 1359.

**SEC. 39.35.342. VILLAGE PUBLIC SAFETY OFFICER SERVICE.**

(a) A vested employee is entitled to credited service for employment as a village public safety officer under the program established under AS 18.65.670 for which the employee has not otherwise received credited service under this plan. An employee is not entitled to credited service for employment as a village public safety officer unless the employee was employed as a village public safety officer for at least one year. The credited service claimed under this section may not exceed five years. Benefits are not payable on credited service for village public safety officer service under this section unless the employee makes retroactive contributions to the plan for the period of time that service credit is claimed.

(b) In order to obtain credited service under this section, an employee shall make an election to do so and shall verify the period of service as a village public safety officer. When eligibility for credited service for village public safety officer service has been established, an indebtedness shall be determined. The amount of the indebtedness is equal to the full actuarial cost of providing benefits based on the service as a village public safety officer. Interest as prescribed by regulation accrues on this indebtedness beginning on the date the actuarial cost is established. Any outstanding indebtedness that exists at the time a person is appointed to retirement necessitates an actuarial adjustment to the benefits payable based upon service as a village public safety officer.

(c) The credited service granted under this section may not be used to satisfy the credited service requirements for normal retirement.

(d) An employee is not entitled to credited service under this section if the employee is entitled to receive retirement benefits from another employer for the same service under a retirement plan that provides benefits based on defined benefits.

History - (Sec. 1 ch 92 SLA 1998; am Sec. 10 ch 97 SLA 2001; am Sec. 25 ch 92 SLA 2004)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, "plan" was substituted for "system" in this section.

Cross References - For the intent of the legislature related to the 2001 amendments to subsection (a) see Sec. 1, ch. 97, SLA 2001 in the 2001 Temporary and Special Acts.

Amendment Notes - The 2001 amendment, effective March 1, 2002, in subsection (a), added the exception at the beginning, added the language beginning "for which the employee" to the end of the first sentence, deleted the former next-to-last sentence, which read "The credited service allowed may not exceed an aggregate period of five years," and inserted "under this section" in the last sentence.

The 2004 amendment, effective June 26, 2004, in subsection (a), deleted “Except for employment for which the employee waived coverage under AS 39.35.127” at the beginning, and inserted the third sentence.

Editors Notes - Section 13, ch. 97, SLA 2001 provides that the amendments to subsection (a) by Sec. 10, ch. 97, SLA 2001 do “not modify the terms of a contract between the state and a nonprofit regional corporation in existence on the effective date of this Act.” The effective date of Sec. 10, ch. 97, SLA 2001, which enacted this section, was March 1, 2002.

### **SEC. 39.35.345. TEMPORARY SERVICE CREDIT.**

(a) A vested employee is entitled to credited service for periods in which the employee regularly rendered full-time personal service to an employer but was not qualified to participate in the plan because of the exclusion of temporary workers as described in AS 39.35.680(22)(C)(iii). Benefits are not payable on this credited service unless the employee makes retroactive contributions to the plan for the period of time that credited service is claimed. The retroactive contribution is the full actuarial cost of providing benefits for the credited service claimed.

(b) To obtain credited service under this section, an employee shall elect to do so and shall verify the period of temporary service. When eligibility for temporary service credit has been established, an indebtedness shall be determined as provided in (a) of this section. Any outstanding indebtedness existing at the time an employee retires requires an actuarial adjustment to the benefits payable based on the temporary service. Interest as prescribed by regulation accrues on the indebtedness beginning

(1) July 1, 1981, or one year following the date the employee first becomes vested, whichever is later, for an employee who claims temporary service credit no more than one year after the employee becomes vested;

(2) the date of vesting, for an employee who becomes vested after June 30, 1980, who is claiming temporary service credit more than one year after vesting for service performed before the employee vested;

(3) July 1, 1980, for an employee who became vested before July 1, 1980, who is claiming temporary service credit after June 30, 1981, for service performed before July 1, 1980;

(4) one year after completing the temporary service, for an employee who was vested on the last day of employment as a temporary employee and who claims the temporary service no more than one year after completing the service;

(5) on the date of completing the temporary service, for an employee who was vested on the last day of employment as a temporary employee and who claims temporary service more than one year after completing the service.

(c) A deferred vested employee on July 1, 1980, is eligible to claim credited service under (a) of this section. To obtain credited service under this section, a deferred vested employee shall elect to do so and shall verify the period of temporary service. When eligibility for temporary service credit has been established, an indebtedness shall be determined as provided in (a) of this section. Interest as prescribed by regulation accrues on that indebtedness beginning July 1, 1981. Any outstanding indebtedness existing at the time a deferred vested employee retires requires an actuarial adjustment to the benefits payable based on the temporary service.

(d) An employee may choose whether the credited service granted under this section is used to satisfy the credited service requirements for normal retirement under AS 39.35.370(a)(2) or (3) or 39.35.385(f) or is only used for the calculation of benefits. An election under this subsection is irrevocable and applies to all temporary credited service that the employee has accrued when the employee retires. An election under this subsection does not change the date that an employee is considered to have commenced participation in the plan under AS 39.35.120.

(e) Notwithstanding the requirement in (a) of this section that an employee be vested to claim credited service under this section, for purposes of a conditional service retirement benefit under AS 39.35.385(f), an employee may claim credited service under this section for temporary legislative employment before July 1, 1979, for which the employee has not received credited service under AS 39.35.360(g).

History - (Sec. 29 ch 146 SLA 1980; am Sec. 25, 26 ch 106 SLA 1988; am Sec. 1, 2 ch 109 SLA 2000)

Revisors Notes - Enacted as AS 39.35.156. Renumbered in 1980.

Under sec. 144, ch. 9, FSSLA 2005, “plan” was substituted for “system” in this section. In 2005, “AS 39.35.680(22)(C)(iii)” was substituted for “AS 39.35.680(21)(C)(iii)” to reflect the 2005 renumbering of AS 39.25.680(21).

Cross References - For authority of a member of the public employees’ retirement system who has claimed credited service under this section before August 31, 2000, to make an election under (d) of this section as reenacted by sec. 1, ch. 109, SLA 2000, before the member’s appointment to retirement, see sec. 4, ch. 109, SLA 2000 in the 2000 Temporary & Special Acts.

### **SEC. 39.35.350. REINSTATEMENT OF CREDITED SERVICE.**

(a) An employee who receives a refund of contributions in accordance with AS 39.35.200 forfeits corresponding credited service under AS 39.35.095 - 39.35.680.

#### **(b) and (c) repeals July 1, 2010**

(b) An employee may reinstate credited service associated with a refund by repaying the total amount of the refund. A former member who received a total refund of the former member's contribution account balance because of a levy under AS 09.38.065 or a federal tax levy may reinstate credited service in the same manner as an employee. Interest accrues from the date of the refund until repayment of the refund or retirement, whichever occurs first. Payments shall be applied first to accrued interest and then to principal.

(c) Any outstanding indebtedness that exists at the time an employee is appointed to retirement necessitates an actuarial adjustment to the benefits payable based on service reinstated under this section.

History - (Sec. 16 ch 143 SLA 1960; am Sec. 3 ch 235 SLA 1968; am Sec. 2 ch 81 SLA 1976; am Sec. 30 ch 128 SLA 1977; am Sec. 84 ch 59 SLA 1982; am Sec. 47 ch 137 SLA 1982; am Sec. 4 ch 89 SLA 1988)

Postponed Repeal Effective Date -. Delayed repeal of section. - Under Sec. 133, ch. 9, FSSLA 2005, this section is repealed June 30, 2010.

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, "AS 39.35.095 - 39.35.680" was substituted for "this chapter" in this section.

### **SEC. 39.35.360. EARLIER SERVICE.**

(a) An employee who completes three years of credited service with the state after January 1, 1961, for which the employee makes contributions required by AS 39.35.095 - 39.35.680 is entitled to credited service for service rendered (1) before January 1, 1961, as an employee of the state and former Territory of Alaska; (2) before January 1, 1961, as an employee of the United States government in Alaska, excluding service in the armed forces of the United States; (3) after January 1, 1961, as a peace officer, correctional officer, or fire fighter of a participating political subdivision of the state if the employee is vested and is an active peace officer, correctional officer, or fire fighter in the plan on or before January 1, 1983; or (4) after January 1, 1961, as a special officer commissioned by the state troopers if the employee has not otherwise received credit for the service and if the employee was employed on or before January 1, 1983, is vested, and has been an active special officer, peace officer, correctional officer, or fire fighter in the plan. The retirement benefits payable to an employee under this section shall be reduced by the amount of the retirement pension benefits paid to the employee by the United States government for the same period of service.

(b) An employee who, under (a) of this section, is entitled to credited service for employment before January 1, 1961, is not required to make retroactive contributions under AS 39.35.095 - 39.35.680.

(c) [Repealed, Sec. 41 ch 146 SLA 1980].

(d) [Repealed, Sec. 2 ch 26 SLA 1974].

(e) An employee of a detention facility provided by a local government unit to the territorial or state government under AS 33.30.031 or former AS 33.30.060, who continues in state employment upon transfer of the facility to the state, is entitled to credited service for prior service with the facility if the employee remains in continuous employment with the state until July 1, 1976. To obtain credited service the employee is required to make retroactive contributions for the period of service between January 1, 1961, and the effective date of the transfer of the facility to the state.

(f) A surviving spouse receiving or entitled to receive a surviving spouse's pension under AS 39.35.440 or benefits under a joint and survivor option filed under AS 39.35.450 is eligible for increased benefits for any service credit authorized under (a) of this section, but not claimed or authorized by law before the employee's death.

(g) An employee is eligible to receive up to 10 years of credited service for service rendered before July 1, 1979, as a temporary employee of the legislature of the state or territory during legislative sessions. To receive retroactive credited service under this subsection, an employee shall claim the service before July 1, 2003, or before retiring, whichever occurs first. When the employee claims the service, an indebtedness of the employee to the plan shall be established. For benefits that do not vary based on the amount of retroactive credited service, the indebtedness shall be established on the date the employee claims the credit, with interest accruing on the indebtedness beginning July 1, 2003. For benefits that vary based on the amount of retroactive credited service, the indebtedness shall be established on the date the employee retires, with interest accruing on the indebtedness beginning on the date of retirement. Any outstanding indebtedness that exists at the time the employee retires requires an actuarial adjustment to the benefits that are based upon retroactive credited service under this subsection.

(h) An employee of the state is eligible to receive credited service under AS 39.35.300(b) for service rendered as a permanent part-time employee before January 1, 1976. When the employee claims retroactive credited service, an indebtedness of the employee to the plan shall be established. The amount of this indebtedness is equal to the contributions the employee would have made if the employee had been eligible for membership in the plan.

The rate used to calculate the contributions may not be less than the rate in effect on January 1, 1961. Interest as prescribed by regulation accrues on the indebtedness beginning July 1, 1981, for employees claiming the service before that date, and beginning July 1, 1980, for employees claiming the service on or after July 1, 1981. Any outstanding indebtedness that exists at the time the employee retires requires an actuarial adjustment to the benefits that are based on retroactive credited service under this subsection.

(i) An employee who completes three years of credited service with an employer, for which the employee makes contributions required by AS 39.35.095 - 39.35.680, is entitled to credited service on a year-for-year basis for service credited in the Civil Service Retirement System, rendered as an employee of an Alaska Bureau of Indian Affairs (BIA) school, other than service as a teacher. When eligibility for retroactive credited service under this subsection has been established, an indebtedness of the employee to the plan shall be determined as follows: (1) the employee's actual annual compensation, or the calculated annual compensation for an employee who works fewer than 12 months, for the most recent calendar year in which service is rendered to an employer before the calendar year in which the employee first becomes eligible to claim service under this subsection, multiplied by (2) the number of years of service in Alaska BIA schools that is credited under this subsection, and this product multiplied by (3) six percent for employees first eligible to claim this service before January 1, 1987, or eight and one-half percent for employees first eligible to claim this service on or after January 1, 1987. Interest as prescribed by regulation accrues on the indebtedness beginning on the date the employee may first claim the retroactive credited service. Any outstanding indebtedness that exists at the time the employee retires requires an actuarial adjustment to the benefits that are based on retroactive credited service under this subsection. A retirement benefit payable under this subsection for Alaska BIA service shall be reduced by an amount equal to the retirement benefits paid to the member by the United States government for the same service.

(j) An employee who has not completed three years of credited service with an employer may claim credited service as an employee of an Alaska Bureau of Indian Affairs (BIA) school, other than service as a teacher under (i) of this section if, on the date of transfer of the Alaska BIA school to the state, the employee is employed at the school and needs fewer than three additional years of continuous full-time employment for normal retirement in the federal Civil Service Retirement System, and the employee completes a period of service with an employer, for which the employer makes contributions required by AS 39.35.095 - 39.35.680, equal to the additional period of service that would have been required for that employee's normal retirement under the federal Civil Service Retirement System. An employee who claims credited service under this subsection shall provide federal government verification of the employee's federal Civil Service Retirement System status when the claim is filed.

(k) A vested member is eligible to receive credited service for employment after January 1, 1961, as a peace officer or fire fighter in a municipality that is an employer under this plan but that was not an employer at the time of the employment. A vested member who claims retroactive credited service on or after July 1, 1988, is indebted to the plan. The amount of the indebtedness is the full actuarial cost of providing benefits for the credited service claimed. Interest as established by regulation accrues on the indebtedness under this subsection beginning the first of the month following establishment of the indebtedness. Any outstanding indebtedness that exists at the time the officer or fire fighter retires requires an actuarial adjustment to the benefits that are based on retroactive credited service under this subsection.

(l) An administrative director of the Alaska Court System who withdraws from the judicial retirement system under AS 22.25.012(b) is eligible for membership in the plan and shall receive credited service in this plan for service rendered as administrative director. To be eligible for membership in this plan under this subsection, the administrative director must contribute to the plan

(1) the amount that would have been contributed if the administrative director had been a member during the period of the membership in the judicial retirement system; and

(2) any contributions for service as administrative director refunded from the plan at the time the administrative director became a member of the judicial retirement system.

History - (Sec. 17 ch 143 SLA 1960; am Sec. 4 ch 80 SLA 1964; am Sec. 5, 6 ch 155 SLA 1966; am Sec. 4 ch 235 SLA 1968; am Sec. 1 ch 55 SLA 1973; am Sec. 1, 2 ch 26 SLA 1974; am Sec. 1, 2 ch 245 SLA 1976; am Sec. 31 - 33 ch 128 SLA 1977; am Sec. 1, 7 ch 174 SLA 1978; am Sec. 3 ch 81 SLA 1979; am Sec. 10 ch 82 SLA 1979; am Sec. 31, 32, 41 ch 146 SLA 1980; am Sec. 48, 49 ch 137 SLA 1982; am Sec. 2 ch 170 SLA 1984; am Sec. 19 - 21 ch 82 SLA 1986; am Sec. 10 ch 88 SLA 1986; am Sec. 27, 28 ch 106 SLA 1988; am Sec. 1 ch 24 SLA 1992; am Sec. 34, 35 ch 59 SLA 2002; am Sec. 99, 100 ch 9 FSSLA 2005)

Revisors Notes - In 1989, the term “fire fighter” was substituted for “fireman” in this section under Sec. 60, ch. 50, SLA 1989.

Under sec. 144, ch. 9, FSSLA 2005, “AS 39.35.095 - 39.35.680” was substituted for “this chapter” and “plan” was substituted for “system” in this section.

Amendment Notes - The 2002 amendment, effective June 20, 2002, in subsection (g) rewrote the second and fourth sentences and added the fifth sentence; and added subsection (l).

The 2005 amendment, effective July 28, 2005, substituted “AS 39.35.095 - 39.35.680” for “this chapter” in the first sentence of subsection (i); substituted “plan” for “system” in the second sentence in subsection (i) and in three places in the introductory language of subsection (l); and substituted “plan” for “public employees’ retirement system” at the first instance of the term in the introductory language of subsection (l) and in paragraph (1)(2).

## **ARTICLE 07. BENEFITS**

### **SEC. 39.35.370. RETIREMENT BENEFITS.**

(a) Subject to AS 39.35.450, a terminated employee is eligible for a normal retirement benefit

(1) at age 60 with at least five years credited service;

(2) with at least 20 years of credited service as a peace officer or fire fighter; or

(3) with at least 30 years of credited service for all other employees.

(b) Subject to AS 39.35.450, a terminated employee is eligible for an early retirement benefit at age 55 with at least five years credited service. An actuarial adjustment shall be made to retirement benefits paid under this section for an early retirement benefit. The monthly amount of a retirement benefit that would be due under (c) of this section shall be reduced by multiplying one-half of one percent times the number of months, to the nearest month, by which the retirement date of the employee falls short of the date that the employee reaches age 60.

(c) The monthly amount of a retirement benefit for a peace officer or fire fighter is two percent of the average monthly compensation times the years of credited service through 10 years, plus two and one-half percent of the average monthly compensation times the years of service over 10 years. For all other employees it is

(1) two percent of the average monthly compensation times all years of service before July 1, 1986, and for years of service through a total of 10 years; plus

(2) two and one-quarter percent of the average monthly compensation times all years of service after June 30, 1986, over 10 years of total service through 20 years; plus

(3) two and one-half percent of the average monthly compensation times all years of service after June 30, 1986, over 20 years of total service.

(d) The monthly amount of a retirement benefit for a deferred vested member shall be determined in accordance with (c) of this section as it was in effect on the date of the employee's termination of employment.

(e) Benefits payable under this section accrue from the first day of the month after which all of the following requirements are met: (1) the member meets the eligibility requirements of this section; (2) the member terminates employment; and (3) the member applies for retirement. The benefits are payable the last day of the month. If payment is delayed, a retroactive payment shall be made to cover the period of deferment. The last payment shall be made for the month in which a benefit is payable under this section.

(f) A member who is vested in the plan as a peace officer or fire fighter at the time the member incurs a permanent disability of at least 33 1/3 percent under workers' compensation and who (1) undergoes retraining because of the disability; and (2) is subsequently employed with the state or other employer in a position other than peace officer or fire fighter, is eligible for a normal retirement benefit as a peace officer or fire fighter under (a) and (c) of this section upon completing 20 years of credited service.

(g) When an employee who was employed as a dispatcher in a state trooper office or in a police or fire department in the plan applies for appointment to retirement, the employee may convert the credited service for that position to credited service as a peace officer by claiming the service as peace officer service. An employee who has converted credited service to peace officer service under this subsection shall be treated as a peace officer for purposes of AS 39.35.095 - 39.35.680. When the member claims this credited service as peace officer service, an indebtedness of the member to the plan shall be established. The indebtedness is equal to the full actuarial cost of the conversion of the credited service to treatment as peace officer service. Any outstanding indebtedness that exists at the time the member is appointed to retirement shall require an actuarial adjustment to the benefits payable based upon the conversion of the credited service.

(h) When an employee applies for appointment to retirement in the plan, the employee may convert the credited service to which this subsection applies to credited service as a peace officer by claiming the service as peace officer service. This subsection applies to credited service as an employee of a state correctional facility, other than as a correctional officer or correctional superintendent. This subsection also applies to credited service as an employee of the Department of Corrections in a management position in the division that has responsibility for institutions or the division that has responsibility for community corrections if the employee also has at least five years of credited service as a probation officer, correctional officer, assistant correctional superintendent, or correctional superintendent at a state correctional facility.

An employee who has converted credited service to peace officer service under this subsection shall be treated as a peace officer for purposes of AS 39.35.095 - 39.35.680. When the member claims this credited service as peace officer service, an indebtedness of the member to the plan shall be established. The indebtedness is equal to the full actuarial cost of the conversion of the credited service to treatment as peace officer service. Any outstanding indebtedness that exists at the time the member is appointed to retirement will require an actuarial adjustment to the benefits payable based upon the conversion of the credited service. In this subsection,

(1) “correctional facility” has the meaning given in AS 33.30.901; and

(2) “management position” includes positions as division director, deputy director, and assistant director.

(i) For plan fiscal years beginning after December 31, 1975, and notwithstanding any other provision of AS 39.35.095 - 39.35.680, the projected annual benefit provided by AS 39.35.095 - 39.35.680 and the benefit from all other defined benefit plans required to be aggregated with the benefits from this plan under the provisions of 26 U.S.C. 415 may not increase to an amount in excess of the amount permitted under 26 U.S.C. 415 at any time. In the event that any projected annual benefit of a member exceeds the limitation of 26 U.S.C. 415(g) for a limitation year, the plan shall take any necessary remedial action to correct an excess accrued annual benefit. The provisions of 26 U.S.C. 415, and the regulations adopted under that statute, as applied to qualified defined benefit plans of governmental employers are incorporated as part of the terms and conditions of the plan. This subsection applies to any member of this plan.

(j) Notwithstanding (c) of this section,

(1) for the plan fiscal years beginning on or after January 1, 1996, the annual compensation of a member who joined the plan after the first day of the first plan fiscal year beginning after December 31, 1995, that is used to calculate the member’s average monthly compensation may not exceed \$150,000, as adjusted for the cost of living in accordance with 26 U.S.C. 401(a)(17)(B);

(2) for the plan fiscal years beginning on or after January 1, 2002, the annual compensation limitation for such a member, which is so taken into account for such a member which is so taken into account for such purposes, may not exceed \$200,000, as adjusted for the cost of living in accordance with 26 U.S.C. 401(a)(17)(B);

(3) the cost-of-living adjustment in effect for a calendar year applies in this subsection to a determination period beginning in the calendar year.

(k) [Repealed, Sec. 116(a) ch 20 SLA 2007].

History - (Sec. 18 ch 143 SLA 1960; am Sec. 2 ch 102 SLA 1963; am Sec. 7 ch 155 SLA 1966; am Sec. 5 ch 235 SLA 1968; am Sec. 6 ch 109 SLA 1970; am Sec. 6, 7 ch 159 SLA 1972; am Sec. 15 ch 47 SLA 1974; am Sec. 34 ch 128 SLA 1977; am Sec. 33 ch 146 SLA 1980; am Sec. 22 - 24 ch 82 SLA 1986; am Sec. 34, 35 ch 117 SLA 1986; am Sec. 14 ch 4 FSSLA 1996; am Sec. 1 ch 110 SLA 2000; am Sec. 1 ch 121 SLA 2000; am Sec. 36 ch 59 SLA 2002; am Sec. 26 ch 92 SLA 2004; am Sec. 101 ch 9 FSSLA 2005; am Sec. 116(a) ch 20 SLA 2007)

Revisors Notes - In 1989, the term “fire fighter” was substituted for “fireman” in this section under Sec. 60, ch. 50, SLA 1989.

Subsection (h) was enacted as (g); relettered in 2000.

Under sec. 144, ch. 9, FSSLA 2005, “AS 39.35.095 - 39.35.680” was substituted for “this chapter” and “plan” was substituted for “system” in this section.

Cross References - For 1980 adjustment to pensions of retirees who were disabled at the time of retirement, see Sec. 49, ch. 146, SLA 1980 in the Temporary and Special Acts and Resolves; for 1986 increase in retirement benefits for certain employees of the Territory of Alaska, see Sec. 54, ch. 82, SLA 1986 in the Temporary and Special Acts and Resolves.

Amendment Notes - The 2002 amendment, effective June 20, 2002, added subsections (i)-(k).

The 2004 amendment, effective June 26, 2004, in subsection (i), added “For system fiscal years beginning after December 31, 1975” at the beginning, and inserted “annual” in the second sentence.

The 2005 amendment, effective July 28, 2005, in subsection (g) substituted “plan” for “public employees’ retirement system” in the first sentence, “AS 39.35.095 - 39.35.680” for “this chapter” in the second sentence, “plan” for “system” in the third sentence, and “shall require” for “will require” in the last sentence.

The 2007 amendment, effective June 7, 2007, repealed subsection (k).

Editors Notes - In general, a person’s right to benefits under the state’s public employee retirement systems vests when the person joins the system. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981). Therefore, former law may govern the benefits of some members of the public employees’ retirement system. The user is advised to ascertain which version of the statute is applicable. Earlier versions of the statutes can be found in prior editions of the Alaska Statutes or in the published Session Laws of Alaska.

Section 57, ch. 82, SLA 1986 provides: “Sections 16, 22-23, 25-27, 42-45, and 50 of this Act apply only to members first hired under the Public Employees’ Retirement System after June 30, 1986.”

Section 44, ch. 4, FSSLA 1996 provides that nothing in that Act, which amended subsection (b), “modifies or terminates the terms of a collective bargaining agreement in effect on July 1, 1996.” Under Sec. 45, ch. 4, FSSLA 1996, the provisions of that Act, which amended subsection (b), are not severable, notwithstanding AS 01.10.030.

Decisions - Employment credits’ restricted use. - The phrase “credit for employment” as used in Sec. 7, ch. 89, SLA 1989, cannot be combined with age to determine a member’s eligibility for retirement benefits; rather, Sec. 7 employment credits can only be applied according to their intended use: to determine years of service requirements in the overall determination of a member’s eligibility for retirement. *Johnson v. Public Employees Retirement Bd.*, 848 P.2d 263 (Alaska 1993).

Constitutionality of cost-of-living allowance. - Limiting cost-of-living allowance (COLA) payments to resident retirees does not violate the Equal Protection Clause of the Alaska Constitution. *Pub. Emples. Ret. Sys. v. Gallant*, 153 P.3d 346 (Alaska 2007).

Cashed-in leave. - Before the Alaska Legislature amended former AS 39.3.680(4) in 1977, by 1977 SLA ch. 128, Sec. 54 (which did specifically exclude cashed-in leave while said statute was silent on the subject), neither by law nor by practice did a former state employee, hired in 1969, acquire a right to have his cashed-in leave included as part of his compensation, and he therefore had no right that could have been impaired when the legislature excluded cashed-in leave from the definition of compensation; accordingly, the Alaska Public Employees’ Retirement Board’s refusal to allow the former state employee to include his cashed-in leave when calculating his retirement benefits did not violate Alaska Const. art. XII, Sec. 7. *McMullen v. Bell*, 128 P.3d 186 (Alaska 2006).

Cited in *Sheffield v. Alaska Pub. Employees’ Ass’n*, 732 P.2d 1083 (Alaska 1987); *Alford v. State*, 195 P.3d 118 (Alaska 2008).

Collateral Refs - 67 C.J.S. Officers, Sec. 311 et seq.

Rights and liabilities as between employer and employee with respect to general pension or retirement plan, 42 ALR2d 461; 46 ALR3d 464.

Mandatory retirement of public officer or employee based on age, 81 ALR3d 811.

What constitutes “salary,” “wages,” “pay,” or the like, within pension law basing benefits thereon, 91 ALR5th 225.

Article Notes - Notes To Decisions

Administrative Code. For benefits under the defined benefit plan, see 2 AAC 35, art. 3.

Legislative History Reports. For governor's transmittal letter for ch. 20, SLA 2007 (SB 123), proposing needed corrections and clarifications of statutes enacted as part of the 2005 legislation establishing defined contributions retirement plans and making related amendments to defined benefit retirement plans, see 2007 Senate Journal 567 - 570.

Vested benefits. - Benefits under Public Employees' Retirement System are in the nature of deferred compensation and the right to such benefits vests immediately upon an employee's enrollment in that system. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981).

The vested benefits protected by Alaska Const., art. XII, Sec. 7, necessarily include not only the dollar amount of the benefits payable, but the requirements for eligibility as well. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981).

The fact that rights in Public Employees' Retirement System vest on employment does not preclude modifications of the system; that fact does, however, require that any changes in the system that operate to a given employee's disadvantage must be offset by comparable new advantages to that employee. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981).

## **SEC. 39.35.371. DISTRIBUTION REQUIREMENTS.**

(a) The entire interest of a member must be distributed or must begin to be distributed not later than the member's required beginning date.

(b) If a member dies after the distribution of the member's interest has begun but before the distribution has been completed, the remaining portion of the interest shall continue to be distributed at least as rapidly as under the method of distribution being used before the member's death.

(c) If a member has made a distribution election and dies before the distribution of the member's interest begins, distribution of the member's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the member's death. However, if any portion of the member's interest is payable to a designated beneficiary, distributions may be made over the life of the designated beneficiary or over a period not greater than the life expectancy of the designated beneficiary, commencing on or before December 31 of the calendar year immediately following the calendar year in which the member died, and if the designated beneficiary is the member's surviving spouse, the date distributions are required to begin may not be earlier than the later of December 31 of the calendar year (1) immediately following the calendar year in which the member died, or (2) in which the member would have attained 70 1/2 years of age, whichever is earlier. If the surviving spouse dies after the member but before payments to the spouse have begun,

the provisions of this subsection apply as if the surviving spouse were the member. An amount paid to a child of the member will be treated as if it were paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.

(d) If a member has not made a distribution election before the member's death, the member's designated beneficiary must elect the method of distribution not later than December 31 of the calendar year (1) in which distributions would be required to begin under this section, or (2) that contains the fifth anniversary of the date of death of the member, whichever is earlier. If the member does not have a designated beneficiary or if the designated beneficiary does not elect a method of distribution, distribution of the member's entire interest must be completed by December 31 of the calendar year containing the fifth anniversary of the member's death.

(e) For purposes of (c) of this section, distribution of a member's interest is considered to begin (1) on the member's required beginning date, or (2) if the designated beneficiary is the member's surviving spouse and the surviving spouse dies after the member but before payments to the spouse have begun, on the date distribution is required to begin to the surviving spouse. If distribution in the form of an annuity irrevocably commences to the member before the required beginning date, the date distribution is considered to begin is the date that the distribution actually commences.

(f) Notwithstanding any contrary provisions of AS 39.35.095 - 39.35.680, the requirements of this section apply to all distributions of a member's interest and take precedence over any inconsistent provisions of AS 39.35.095 - 39.35.680.

(g) All distributions required under this section are determined and made in accordance with 26 U.S.C. 401(a)(9) and regulations adopted under that statute, including any minimum distribution incidental benefit requirement.

(h) Unless otherwise specified, the provisions of this section apply to calendar years beginning on or after January 1, 1983.

(i) In this section,

(1) "designated beneficiary" means the individual who is designated as the beneficiary under the plan in accordance with 26 U.S.C. 401(a)(9) and regulations adopted under that statute;

(2) "required beginning date" means the first day of April of the calendar year following the calendar year in which the member either attains 70 1/2 years of age or actually retires, whichever is later.

History - (Sec. 37 ch 59 SLA 2002; am Sec. 27 ch 92 SLA 2004)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, “AS 39.35.095 - 39.35.680” was substituted for “this chapter” and “plan” was substituted for “system” in this section.

Amendment Notes - The 2004 amendment, effective June 26, 2004, substituted “1983” for “1989” in subsection (h).

## **SEC. 39.35.375. PUBLIC SERVICE BENEFIT.**

(a) An active or inactive member who has never been vested in this plan or in the teachers’ retirement plan under AS 14.25.009 - 14.25.220, who has at least two years of credited service in this plan, and who has membership service in the teachers’ retirement system may claim credited service in this plan in an amount equal to the membership service the member has in the teachers’ retirement system. The claimed credited service may be added to service earned under AS 39.35.095 - 39.35.680 to enable the member to qualify for a public service benefit under this section. The member may not claim credited service for membership service for which the member has received a refund under AS 14.25.150 unless the member fully pays the indebtedness as established under AS 14.25.063. The member may not claim credited service in this plan based on unused sick leave under AS 14.25.115.

(b) To claim credited service under this section, the member shall file a written request with the administrator when the member applies to retire. The administrator shall determine the full actuarial cost of benefits based on the member’s total credited service and shall transfer from the teachers’ retirement system to this plan an amount equal to the sum of the member contributions and any indebtedness payments to the teachers’ retirement system and the employer contributions to the teachers’ retirement system made on behalf of the employee together with interest earned on those contributions and indebtedness payments. If the amount to be transferred, when combined with the amount of employee contributions and indebtedness payments to this plan and the amount of employer contributions on behalf of the employee in this plan, and interest earned on contributions and indebtedness payments for the employee, is less than the full actuarial cost computed under this subsection, an indebtedness to the plan equal to the amount of the difference is established. Interest as prescribed by regulation accrues on the indebtedness. The member must pay any outstanding indebtedness existing at the time the member applies for retirement in full before the member is appointed to retirement under this section.

(c) A member is entitled to receive a public service benefit under this section if the member has at least a total of five years credited service under

AS 39.35.095 - 39.35.680 and credited service from the teachers' retirement plan under AS 14.25.009 - 14.25.220 claimed under this section. A public service benefit shall be calculated using the higher of the average monthly compensation for service in this plan or the average base salary for service in the teachers' retirement plan under AS 14.25.009 - 14.25.220. The amount of the benefit shall be calculated in accordance with AS 39.35.370(c).

(d) Credited service earned under either this plan or the teachers' retirement system that has been claimed for a public service benefit under this section may not be used for any other purpose. A member who claims credited service under this section loses all rights to benefits under AS 14.25 based on the claimed credited service. A member may not claim credited service under this section unless the member claims all of the membership service the member has in the teachers' retirement system. A public service benefit does not constitute a normal or early retirement benefit for purposes of qualifying for a conditional service retirement benefit under AS 14.25.125 or AS 39.35.385.

(e) A member whose rights to benefits under AS 14.25 are subject to a qualified domestic relations order may claim credited service under this section. However, the credited service claimed remains subject to the terms of the order.

(f) Notwithstanding AS 14.25.063 and AS 39.35.350, a former member of the teachers' retirement system who is an active member or inactive member of this plan may reinstate, under this section, membership service earned under AS 14.25 for which the member received a refund of contributions.

(g) If a member retires under this section and subsequently returns to work for an employer under this plan or the teachers' retirement system, benefits under this section shall cease during the period of reemployment and shall recommence when the reemployment is ended. The credited service earned during the period of reemployment may not be added to the credited service claimed for a public service benefit under this section. If a member vests and meets the other eligibility requirements under this system or the teachers' retirement system during the reemployment, the member is entitled to a benefit under AS 14.25.009 - 14.25.220 or AS 39.35.095 - 39.35.680, as appropriate.

(h) In this section,

(1) "membership service earned under AS 14.25" means membership service earned under AS 14.25.009 - 14.25.220;

(2) "teachers' retirement system" and "teachers' retirement system under AS 14.25" mean the teachers' retirement plan established in AS 14.25.009 - 14.25.220.

History - (Sec. 3 ch 109 SLA 2000; am Sec. 102 - 106, 108, 109 ch 9 FSSLA 2005)

Delayed Amendment - of subsection (f). - Under Sec. 107 and 149, ch. 9, FSSLA 2005, effective June 30, 2010, subsection (f) will read as follows: “(f) Notwithstanding AS 14.25.063, a former member of the teachers’ retirement system who is an active member or inactive member of this plan may reinstate, under this section, membership service earned under AS 14.25 for which the member received a refund of contributions.”

of subsection (a). - Under Sec. 68 and 119, ch. 20, SLA 2007, effective July 1, 2010, subsection (a) will read as follows: “(a) An active or inactive member who has never been vested in this plan or in the teachers’ retirement plan under AS 14.25.009 - 14.25.220, who has at least two years of credited service in this plan, and who has membership service in the teachers’ retirement system may claim credited service in this plan in an amount equal to the membership service the member has in the teachers’ retirement system. The claimed credited service may be added to service earned under AS 39.35.095 - 39.35.680 to enable the member to qualify for a public service benefit under this section. The member may not claim credited service for membership service for which the member has received a refund under AS 14.25.150. The member may not claim credited service in this plan based on unused sick leave under AS 14.25.115.”

Postponed Repeal Effective Date - Delayed repeal of subsection (f). - Under Sec. 116(b) and 119, ch. 20, SLA 2007, subsection (f) of this section is repealed effective July 1, 2010.

Amendment Notes - The 2005 amendment, effective July 28, 2005, substituted “plan” for “system” in subsections (a)-(d), (f), and (g); updated section references in subsections (a), (c), and (g); and added subsection (h); and, effective June 30, 2010, deleted a section reference in subsection (f).

## **SEC. 39.35.380. EARLY RETIREMENT BENEFITS.**

**[REPEALED, SEC. 55 CH 128 SLA 1977].**

Repealed or Renumbered

## **SEC. 39.35.381. ALTERNATE BENEFIT FOR ELECTED PUBLIC OFFICERS.**

(a) An elected public officer is eligible for a public officer benefit if the officer is retired under AS 14.25.009 - 14.25.220. Only fully paid credited service as an elected public officer of a municipality or other political subdivision, earned while the municipality or political subdivision was an employer under this plan and while the person was employed full-time under AS 14.25.009 - 14.25.220, may be counted under this section.

(b) Credited service for which contributions were refunded is not creditable under this section unless the refunded contributions have been repaid. For purposes of (a) of this section, a member or former member does not have to be

reemployed under this plan in order to pay refunded contributions. Compound interest at the rate prescribed by regulation shall be added to the reinstatement indebtedness from the date of the refund to the date of repayment.

(c) The amount of the monthly elected public officer benefit is two percent of the average monthly compensation for service eligible under this section times those years of service.

(d) When an elected public officer eligible to receive credited service under this section dies, the officer's designated beneficiary is entitled to the balance in the officer's employee contribution account.

(e) A person who retires under this section is not entitled to disability or death benefits under AS 39.35.400 - 39.35.440, a minimum benefit under AS 39.35.485, or to medical benefits under AS 39.35.535. Service earned under this section may not be used for vesting under AS 39.35.095 - 39.35.680.

(f) Benefits payable under this section accrue from the first day of the month after which all of the following requirements are met: (1) the elected public officer meets the eligibility requirements of this section; (2) the officer terminates employment under AS 39.35.095 - 39.35.680; and (3) the officer applies for retirement. The benefits are payable the last day of the month. If payment is delayed, a retroactive payment shall be made to cover the period of the delay.

(g) An elected public officer may claim credit under this section for service performed as an elected public officer before May 31, 1989. To claim the service, the elected public officer must have been an elected public officer of a municipality or political subdivision that was an employer under this plan during the elected service and must have been employed full-time under AS 14.25 during that time. When the elected public officer claims that service, an indebtedness to the plan is established. The amount of the indebtedness is the full actuarial cost of providing benefits for the service claimed. Interest as prescribed by regulation accrues on that indebtedness beginning on July 1, 1989. Any outstanding indebtedness existing at the time the person retires requires an actuarial adjustment to the benefits payable based on that service.

History - (Sec. 3 ch 58 SLA 1989; am Sec. 110 ch 9 FSSLA 2005)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, "AS 39.35.095 - 39.35.680" was substituted for "this chapter" and "plan" was substituted for "system" in this section.

Amendment Notes - The 2005 amendment, effective July 28, 2005, in subsection (a) updated internal references and substituted "plan" for "system".

### **SEC. 39.35.385. CONDITIONAL SERVICE RETIREMENT BENEFITS.**

(a) Subject to AS 39.35.450, an employee is eligible for a normal retirement benefit at age 60 with at least two years of credited service if the employee also is eligible for a normal retirement salary under AS 14.25 (teachers' retirement system).

(b) Subject to AS 39.35.450, an employee is eligible for an early retirement benefit at age 55 with at least two years of credited service if the employee also is eligible for an early retirement salary under AS 14.25 (teachers' retirement system).

(c) Credited service for which contributions were refunded is not creditable under this section unless the refunded contributions have been repaid. For purposes of (a) and (b) of this section, a member or former member does not have to be reemployed under this plan in order to pay refunded contributions. Compound interest at the rate prescribed by regulation shall be added to the reinstatement indebtedness from the date of the refund to the date of repayment.

(d) The monthly amount of a conditional service retirement benefit shall be calculated on the years of fully paid credited service in accordance with AS 39.35.370(c), except that the member may irrevocably elect to substitute one-twelfth of the "average base salary" as defined in AS 14.25.220(5) in place of average monthly compensation.

(e) Benefits payable under this section accrue from the first day of the month (1) in which the member meets the eligibility requirements of this section, (2) following the date of termination, and (3) following application for retirement, and are payable the last day of the month. If payment is delayed, a retroactive payment shall be made to cover the period of deferment. The last payment shall be made for the month in which the member dies or is no longer eligible for a benefit under this section.

(f) Subject to AS 39.35.450, an employee is eligible for a normal retirement benefit at age 60 or an early retirement benefit at age 55 if the employee was first hired as a legislative employee before May 30, 1987, and has at least 60 days of credited service as an employee of the legislature, other than as an employee of the Office of the Ombudsman or the office of victims' rights, during each of five legislative sessions. An employee who was first hired as a legislative employee on or after May 30, 1987, and is otherwise eligible under this subsection must have at least 80 days of credited service during each of five legislative sessions to receive benefits under this subsection.

History - (Sec. 3 ch 174 SLA 1978; am Sec. 11 ch 82 SLA 1979; am Sec. 37 ch 13 SLA 1980; am Sec. 50, 51 ch 137 SLA 1982; am Sec. 25 - 27 ch 82 SLA 1986; am Sec. 36, 37 ch 117 SLA 1986; am Sec. 9 ch 21 SLA 1987; am Sec. 23 ch 92 SLA 2001)

Delayed Amendment - of subsection (c). - Under Sec. 69 and 119, ch. 20, SLA 2007, effective July 1, 2010, subsection (c) will read as follows: ““(c) Credited service for which contributions were refunded is not creditable under this section.”

Revisors Notes - In 1986, the phrase “Subject to AS 39.35.450” was added at the beginning of (f) of this section in order to be consistent with (a) and (b) of this section and the language of AS 39.35.450, as amended by ch. 117, SLA 1986.

Under sec. 144, ch. 9, FSSLA 2005, “plan” was substituted for “system” in (c) of this section.

Cross References - For applicability of (f) of this section to certain persons not employed under the public employee’s retirement system on July 1, 1979, see Sec. 15, ch. 82, SLA 1979 in the Temporary and Special Acts and Resolves.

Amendment Notes - The 2001 amendment, effective July 1, 2002, inserted “or the office of victims rights” in the first sentence in subsection (f).

Editors Notes - In general, a person’s right to benefits under the state’s public employee retirement systems vests when the person joins the system. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981). Therefore, former law may govern the benefits of some members of the teachers’ retirement system. The user is advised to ascertain which version of a particular statute is applicable. Earlier versions of the statutes can be found in prior editions of the Alaska Statutes or in the published Session Laws of Alaska.

Section 57, ch. 82, SLA 1986 provides: “Sections 16, 22-23, 25-27, 42-45, and 50 of this Act apply only to members first hired under the Public Employees’ Retirement System after June 30, 1986.”

## **SEC. 39.35.389. ALTERNATE BENEFITS FOR EPORS MEMBERS.**

(a) Notwithstanding former AS 39.37.050, a former member of the Alaska Territorial Legislature who is receiving a benefit on June 5, 1989 under the Elected Public Officers Retirement System and who has at least 30 years of credited service in the territorial and state legislatures may elect a benefit under this subsection instead of the benefit under former AS 39.37.050. The monthly amount of a benefit under this subsection is the greater of the member’s years of credited service multiplied by

- (1) the member’s average monthly compensation and that amount multiplied by two percent; or
- (2) \$100.

(b) Notwithstanding former AS 39.37.060, a surviving spouse receiving a benefit under the Elected Public Officers Retirement System whose spouse met the requirements of (a) of this section at the time of the spouse's death may elect a benefit under this subsection instead of the benefit under former AS 39.37.060. The amount of a benefit under this subsection is 50 percent of the amount calculated for the deceased spouse under (a) of this section.

(c) Benefits payable under this section accrue from the first day of the month following receipt of an application for benefits under this section and are payable on the last day of the month.

History - (Sec. 29 ch 106 SLA 1988)

**SEC. 39.35.390. DEFERRED RETIREMENT BENEFIT.**

**[REPEALED, SEC. 55 CH 128 SLA 1977].**

Repealed or Renumbered

**SEC. 39.35.395. VOLUNTARY CONTRIBUTION BENEFIT.**

The balance of the employee's savings account shall be paid in one of the following options as elected by the employee:

- (1) a lump sum payment; or
- (2) a life annuity on a full cash refund or term-certain basis; or
- (3) installments over a designated period of time.

History - (Sec. 35 ch 128 SLA 1977)

**SEC. 39.35.400. NONOCCUPATIONAL DISABILITY BENEFITS.**

(a) An employee is eligible for a nonoccupational disability benefit if the employee's employment is terminated because of a total and apparently permanent nonoccupational disability, as defined in AS 39.35.680, before the employee's normal retirement date and after five or more years of credited service. A member is not entitled to a nonoccupational disability benefit under this section unless the member files an application for the benefit with the administrator within 90 days after the member terminated employment. The board may waive a filing deadline if there are extraordinary circumstances that resulted in the inability to meet the deadline. The board may delegate the authority to waive a filing deadline under this subsection to the administrator.

(b) The nonoccupational disability benefits accrue beginning the first day of the month following termination of employment as a result of the disability and are payable the last day of the month. If a final determination granting the

benefit is not made in time to pay the benefit when due, a retroactive payment shall be made to cover the period of deferment. The last payment shall be for the first month in which the disabled employee

(1) dies;

(2) recovers from disability;

(3) fails to meet the requirements under (e) of this section or under AS 39.35.415; or

(4) reaches normal retirement age.

(c) If the disabled employee becomes ineligible to receive nonoccupational disability benefits, the employee is entitled to receive a normal or early retirement benefit if the employee would have been eligible for the benefit had employment continued during the period of disability. However, the period of disability does not constitute credited service.

(d) The monthly amount of the nonoccupational disability benefit shall be determined in accordance with AS 39.35.370(c), considering the employee's credited service and compensation before termination of employment.

(e) A disabled employee receiving a nonoccupational disability benefit shall provide the administrator, one year after appointment to disability benefits and once each year thereafter until disability benefits cease, proof of continuing eligibility to receive disability payments under the Social Security Act. If the disabled employee is otherwise ineligible for a social security payment, the employee shall provide the administrator with sufficient medical evidence once each year to demonstrate that disability payments under the Social Security Act would be payable had the employee been otherwise eligible. If the disabled employee fails to provide the administrator with evidence of continuing eligibility for disability payments under the Social Security Act or other medical evidence required by the administrator within 30 days following each anniversary date, the disability benefits from the plan shall cease. If that information is subsequently provided to the administrator, benefit payments will resume beginning for the month following that in which the information is provided. When disability payments under the Social Security Act cease, it is the responsibility of the disabled employee to notify the administrator immediately.

(f) A disabled employee's nonoccupational disability benefit terminates when the employee first attains eligibility for normal retirement. At that time, retirement benefits will be calculated under AS 39.35.370(c).

History - (Sec. 21 ch 143 SLA 1960; am Sec. 9 ch 155 SLA 1966; am Sec. 9, 10 ch 109 SLA 1970; am Sec. 10 ch 159 SLA 1972; am Sec. 15 - 17 ch 1 SLA 1974; am Sec. 4 - 8 ch 123 SLA 1976; am Sec. 36, 37 ch 128 SLA 1977; am Sec. 28 - 32 ch 82 SLA 1986; am Sec. 41 ch 68 SLA 2000)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, “plan” was substituted for “system” in this section.

Editors Notes - In general, a person’s right to benefits under the state’s public employee retirement systems vests when the person joins the system. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981). Therefore, former law may govern the benefits of some members of the public employees’ retirement system. The user is advised to ascertain which version of the statute is applicable. Earlier versions of the statutes can be found in prior editions of the Alaska Statutes or in the published Session Laws of Alaska.

Decisions -Termination because of disability. - In determining whether an employee was terminated because of his disability, the Public Employee’s Retirement Board and superior court erred by basing their decisions on the employer’s reasons for the termination rather than on the causal relationship between the termination and the employee’s disability. *Stalnaker v. M.L.D.*, 939 P.2d 407 (Alaska 1997).

## **SEC. 39.35.410. OCCUPATIONAL DISABILITY BENEFITS.**

(a) An employee is eligible for an occupational disability benefit if employment is terminated because of a total and apparently permanent occupational disability, as defined in AS 39.35.680, before the employee’s normal retirement date.

(b) The occupational disability benefits accrue beginning the first day of the month following termination of employment as a result of the disability and are payable the last day of the month. If a final determination granting the benefit is not made in time to pay the benefit when due, a retroactive payment shall be made to cover the period of deferment. The last payment shall be for the first month in which the disabled employee

(1) dies;

(2) recovers from disability;

(3) fails to meet the requirements under (g) of this section or under AS 39.35.415; or

(4) reaches normal retirement age.

(c) If the disabled employee becomes ineligible to receive occupational disability benefits before the normal retirement date, the disabled employee shall then be entitled to receive an early retirement benefit if the employee would have been eligible for the benefit had employment continued during the period of disability. The period of disability constitutes credited service.

(d) The monthly amount of an occupational disability benefit is 40 percent of the disabled employee's gross monthly compensation at the time of termination due to disability.

(e) [Repealed, Sec. 12 ch 123 SLA 1976].

(f) An employee is not entitled to an occupational disability benefit unless the employee files an application for it with the administrator within 90 days of the date of terminating employment. If the employee is unable to meet a filing requirement of this subsection, it may be waived by the commissioner if there are extraordinary circumstances that resulted in the employee's inability to meet the filing requirement.

(g) A disabled employee receiving an occupational disability benefit shall undergo a medical examination as often as the administrator considers advisable but not more frequently than once each year. The administrator shall determine the place of the examination and engage the physician or physicians. If, in the judgment of the administrator, the examination indicates that the retired employee is no longer incapacitated because of a total and apparently permanent occupational disability, the administrator may not issue further disability benefits to the employee.

(h) A disabled employee's occupational disability benefit terminates when the disabled employee first attains eligibility for normal retirement. At that time, the employee's retirement benefit shall be calculated under the provisions of AS 39.35.370(c).

(i) Notwithstanding (h) of this section, at the time a peace officer or fire fighter receiving occupational disability benefits under this section first attains eligibility for normal retirement, the employee shall irrevocably elect to receive retirement benefits in the amount calculated as the

(1) monthly occupational disability benefit calculated under (d) of this section; or

(2) employee's retirement benefit calculated under the provisions of AS 39.35.370(c).

(j) Notwithstanding (b)(3) of this section, a peace officer or fire fighter who retires under (i) of this section is not subject to the requirements of (g) of this section or AS 39.35.415 during retirement.

History - (Sec. 22 ch 143 SLA 1960; am Sec. 11 ch 109 SLA 1970; am Sec. 18 - 21 ch 1 SLA 1974; am Sec. 13 ch 205 SLA 1975; am Sec. 9 - 13 ch 123 SLA 1976; am Sec. 38, 39 ch 128 SLA 1977; am Sec. 38 ch 13 SLA 1980; am Sec. 33 - 39 ch 82 SLA 1986; am Sec. 42 ch 68 SLA 2000; am Sec. 38 ch 59 SLA 2002; am Sec. 111 ch 9 FSSLA 2005)

Amendment Notes - The 2002 amendment, effective June 20, 2002, added subsections (i) and (j).

The 2005 amendment, effective July 28, 2005, in subsection (f) substituted “commissioner” for “Public Employees’ Retirement Board” in the second sentence and deleted the last sentence, which read “The board may delegate the authority to waive a filing deadline under this subsection to the administrator.”

Editors Notes - In general, a person’s right to benefits under the state’s public employee retirement systems vests when the person joins the system. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981). Therefore, former law may govern the benefits of some members of the public employees’ retirement system. The user is advised to ascertain which version of the statute is applicable. Earlier versions of the statutes can be found in prior editions of the Alaska Statutes or in the published Session Laws of Alaska.

Chapter 205, SLA 1975, which amended this section, was submitted to the voters by referendum and was rejected.

AG Opinions - Benefits paid under subsection (i) of this section are retirement benefits, and not disability benefits. Sept. 19, 2002, Op. Att’y Gen.

Decisions - Constitutionality of 1976 amendment to subsections (d) and (g). - The 1976 amendment to subsections (d) and (g) of this section is not violative of Alaska Const., art. XII, Sec. 7 insofar as applied to public safety employees hired before July 1, 1976, who elect to be covered by Public Employees’ Retirement System as amended in 1976 and public safety employees hired on or after July 1, 1976. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981).

The 1976 amendment to subsections (d) and (g) of this section has the effect of diminishing the vested rights of public safety employees hired before July 1, 1976, who choose to receive benefits under the system in effect at the time they were hired and insofar as applied to those employees, the amended subsections are violative of Alaska Const., art. XII, Sec. 7. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981).

“Employees” construed. - A former employee who had withdrawn his Public Employees’ Retirement System (PERS) contributions is not eligible for occupational disability benefits. Only “employees” are eligible for occupational disability benefits under PERS. “Former members” of PERS are not considered “employees.” “Former member” includes any employee

who has received a total refund of the balance of the employee contribution account, or who has requested in writing a refund of the balance in the employee contribution account. *Waller v. Stalnaker*, 915 P.2d 637 (Alaska 1996).

Work-related aggravation of preexisting condition. - Occupational disability can occur from work-related aggravation of a preexisting condition. *Hester v. State, Pub. Employees' Retirement Bd.*, 817 P.2d 472 (Alaska 1991).

Burden of proof. - In occupational disability claims, unlike workers' compensation claims, the employee bears the burden of establishing by a preponderance of the evidence that the disability was proximately caused by an injury which occurred in the course of employment. *Hester v. State, Pub. Employees' Retirement Bd.*, 817 P.2d 472 (Alaska 1991).

Link between work and injury not shown. - Substantial evidence supported the board's conclusion that there was no proven causal link between claimant's work as police chief and the disabling effects of his Crohn's disease. *Hester v. State, Pub. Employees' Retirement Bd.*, 817 P.2d 472 (Alaska 1991).

The Public Employees' Retirement Board applied the correct legal standard in considering whether an occupational injury had been a "substantial factor" in the employee's disability, and there was substantial evidence to support the Board's conclusion that the employee's disability was caused by a degenerative hip condition unrelated to her work. *Lopez v. Administrator, Pub. Employees' Retirement Sys.*, 20 P.3d 568 (Alaska 2001).

Termination because of disability. - In determining whether an employee was terminated because of his disability, the Public Employee's Retirement Board and superior court erred by basing their decisions on the employer's reasons for the termination rather than on the causal relationship between the termination and the employee's disability. *Stalnaker v. M.L.D.*, 939 P.2d 407 (Alaska 1997).

Standard for determining benefit eligibility based on statutory language. - The term "recovers from disability" in subsection (b) of this section cannot be read without reference to the definition of occupational disability in AS 39.35.680; to interpret otherwise would result in two different statutory criteria for benefits eligibility: One standard under AS 39.35.680 that would require only inability to perform an available Public Employees' Retirement System (PERS) job, and a second standard under this section, through which benefits might be terminated based on outside employment: The plain meaning of the statute defining occupational disability as an inability to perform the employee's usual duties or the duties of a comparable position that a PERS employer makes available is clear. *State v. Morton*, 123 P.3d 986 (Alaska 2005).

Quoted in *Rhines v. State*, 30 P.3d 621 (Alaska 2001).

Cited in *Stalnaker v. Williams*, 960 P.2d 590 (Alaska 1998).

Collateral Refs - 67 C.J.S. Officers, Sec. 319.

Determination whether firefighter's disability is service-connected for disability pension purposes, 7 ALR4th 799.

Determination whether peace officer's disability is service-connected for disability pension purposes, 12 ALR4th 1158.

### **SEC. 39.35.415. REEMPLOYMENT OF DISABLED EMPLOYEES.**

An employee appointed to disability benefits under AS 39.35.400 or 39.35.410 shall apply to the division of vocational rehabilitation within 30 days of the date disability benefits commence. The employee shall be enrolled in a rehabilitation program if the employee meets the eligibility requirements of the division of vocational rehabilitation. Unless the employee demonstrates cause, benefits shall terminate at the end of the first month in which a disabled employee

(1) fails to report to the division of vocational rehabilitation;

(2) is certified by the division of vocational rehabilitation as failing to cooperate in a vocational rehabilitation program;

(3) fails to interview for a job; or

(4) fails to accept a position offered.

History - (Sec. 40 ch 82 SLA 1986)

Decisions - Failure to accept offer of employment. - This section permits an employee to demonstrate cause why benefits should not be terminated even though he failed to accept a position offered. *State v. Morton*, 123 P.3d 986 (Alaska 2005).

### **SEC. 39.35.420. NONOCCUPATIONAL DEATH BENEFITS.**

(a) If the death of an employee occurs from nonoccupational causes after completing less than one year of credited service, the employee's designated beneficiary shall be paid the balance of the employee contribution account. If the death of an employee occurs from nonoccupational causes after completing at least one year but less than five years of credited service, a death benefit shall be paid to the employee's designated beneficiary. The amount of the death benefit shall be the amount set out in (c) of this section.

(b) If the death of a vested member or deferred vested member occurs from nonoccupational causes and the member designated no person other than the surviving spouse as beneficiary to receive nonoccupational death benefits,

the surviving spouse may elect to receive either the amounts set out in (c) of this section or a 50 percent joint and survivor option based on credited service to the date of the employee's death or termination. Benefits accrue from the first day of the month following the employee's death and are payable the last day of the month.

(c) If, under AS 39.35.490, a vested or deferred vested member designates as beneficiary to receive nonoccupational benefits someone other than the surviving spouse to whom the member has been married for at least one year, the administrator shall pay the designated beneficiary: (1) the balance of the deceased member's employee contribution account; and (2) a lump-sum death benefit. The amount of the lump-sum death benefit is \$100 times the years of credited service of the deceased member plus \$1,000.

History - (Sec. 23 ch 143 SLA 1960; am Sec. 12 ch 109 SLA 1970; am Sec. 11 ch 159 SLA 1972; am Sec. 22 ch 1 SLA 1974; am Sec. 14, 15 ch 123 SLA 1976; am Sec. 40 ch 128 SLA 1977; am Sec. 52 ch 137 SLA 1982; am Sec. 38 ch 117 SLA 1986)

Collateral Refs - 67 C.J.S. Officers, Sec. 320.

### **SEC. 39.35.430. OCCUPATIONAL DEATH BENEFIT.**

(a) [Repealed, Sec. 16 ch 123 SLA 1976].

(b) If (1) the death of an employee occurs before the employee's retirement and before the employee's normal retirement date, and (2) the proximate cause of death is a bodily injury sustained or a hazard undergone while in the performance and within the scope of the employee's duties, and (3) the injury or hazard is not the proximate result of wilful negligence of the employee, a monthly survivor's pension shall be paid to the surviving spouse. If there is no surviving spouse or if the spouse later dies, the monthly survivor's pension shall be paid in equal parts to the dependent children of the employee. On the date the normal retirement of the employee would have occurred if the employee had lived, monthly payments shall equal the monthly amount of the normal retirement benefit to which the employee, had the employee lived and continued employment until the employee's normal retirement date, would have been entitled with an average monthly compensation as existed at death and the credited service to which the employee would have been entitled.

(c) The first payment of the surviving spouse's pension or of a dependent child's pension shall be made for the month following the month in which the employee dies and payment shall cease to be made beginning with the month in which there is no surviving spouse or no dependent child.

(d) [Repealed, Sec. 19 ch 123 SLA 1976].

(e) [Repealed, Sec. 19 ch 123 SLA 1976].

(f) If the death of an employee occurs from occupational causes but no surviving spouse or dependent children exist at the time of the death or if the employee designates as beneficiary under AS 39.35.490 someone other than the surviving spouse or dependent children, the employee's designated beneficiary is entitled to receive those benefits available to a beneficiary under AS 39.35.420(c) and an occupational death benefit may not be paid to the surviving spouse or dependent children.

(g) The monthly survivor's pension in (b) of this section for survivors of employees who were not peace officers or fire fighters is 40 percent of the employee's monthly compensation in the month in which the employee dies. The monthly survivor's pension in (b) of this section for survivors of employees who were peace officers or fire fighters is the greater of

(1) 50 percent of the monthly compensation in the month in which the employee dies; or

(2) 75 percent of the employee's retirement benefit calculated under the provisions of AS 39.35.370(c) if the employee had survived to normal retirement age.

(h) If an employee's death is caused by an act of assault, assassination, or terrorism directly related to the person's status as an employee, whether the act occurs on or off the employee's job site, the death shall be considered to have occurred in the performance of and within the scope of the employee's duties for purposes of (b)(2) of this section. If the expressed or apparent motive and intent of the perpetrator of the harm inflicted upon the employee was due to the performance of the employee's job duties or employment, the death shall be considered to be directly related to the employee's status as an employee. An employee's job duties are those performed within the course and scope of the person's employment with an employer.

History - (Sec. 24 ch 143 SLA 1960; am Sec. 13 ch 109 SLA 1970; am Sec. 23 ch 1 SLA 1974; Sec. 16 - 19 ch 123 SLA 1976; am Sec. 41, 42 ch 128 SLA 1977; am Sec. 39 ch 13 SLA 1980; am Sec. 53, 54 ch 137 SLA 1982; am Sec. 39 ch 117 SLA 1986; am Sec. 2 ch 40 SLA 2002; am Sec. 39, 40 ch 59 SLA 2002)

Revisors Notes - Subsection (h) was enacted as subsection (g) and renumbered in 2002.

Amendment Notes - The first 2002 amendment, effective September 5, 2002, added subsection (h).

The second 2002 amendment, effective June 20, 2002, deleted “equal to 40 percent of the employee’s monthly compensation in the month in which the employee dies” following “survivor’s pension” in the first sentence in subsection (b); and added subsection (g).

Editors Notes - In general, a person’s right to benefits under the state’s public employee retirement systems vests when the person joins the system. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981). Therefore, former law may govern the benefits of some members of the public employees’ retirement system. The user is advised to ascertain which version of the statute is applicable. Earlier versions of the statutes can be found in prior editions of the Alaska Statutes or in the published Session Laws of Alaska.

Decisions - Constitutionality of 1976 amendment to former subsection (a) and subsection (b). - The 1976 amendment to former subsection (a) and subsection (b) of this section is not violative of Alaska Const., art. XII, Sec. 7 insofar as applied to public safety employees hired before July 1, 1976, who elect to be covered by Public Employees’ Retirement System as amended and public safety employees hired on or after July 1, 1976. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981).

The 1976 amendment to former subsection (a) and subsection (b) of this section had the effect of diminishing the vested rights of public safety employees hired before July 1, 1976, who chose to receive benefits under the system in effect at the time they were hired and insofar as applied to those employees, the amended subsections were violative of Alaska Const., art. XII, Sec. 7. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981).

## **SEC. 39.35.440. DEATH AFTER OCCUPATIONAL DISABILITY.**

(a) [Repealed, Sec. 19 ch 123 SLA 1976].

(b) Upon the death of a disabled employee who is receiving or is entitled to receive an occupational disability benefit, the administrator shall pay the surviving spouse a surviving spouse’s pension, equal to 40 percent of the employee’s monthly compensation at the termination of employment because of occupational disability. If there is no surviving spouse, the administrator shall pay the survivor’s pension in equal parts to the dependent children of the employee. On the date the normal retirement of the employee would have occurred if the employee had lived, the administrator shall adjust the monthly payments to equal the monthly amount of the normal retirement benefit to which the employee, had the employee lived and continued employment until the employee’s normal retirement date, would have been entitled with an average monthly compensation as existed at death and the credited service to which the employee would have been entitled. If the death of an employee occurs from occupational causes but no surviving spouse or dependent children

exist at the time of the death, or if the employee designates as beneficiary under AS 39.35.490 someone other than the surviving spouse or dependent children, the administrator shall pay the employee's designated beneficiary those benefits available to a beneficiary under AS 39.35.420(c) and may not pay an occupational death benefit to the surviving spouse or dependent children.

(c) The first payment of the surviving spouse's pension or of a dependent child's pension shall accrue from the first day of the month following the employee's death and is payable the last day of the month. The last payment shall be made for the last month in which there is an eligible surviving spouse or child.

(d) [Repealed, Sec. 55 ch 128 SLA 1977].

History - (Sec. 25 ch 143 SLA 1960; am Sec. 14, 15 ch 109 SLA 1970; am Sec. 19 - 21 ch 123 SLA 1976; am Sec. 43, 44, 55 ch 128 SLA 1977; am Sec. 55 ch 137 SLA 1982; am Sec. 40 ch 117 SLA 1986)

Editors Notes - In general, a person's right to benefits under the state's public employee retirement systems vests when the person joins the system. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981). Therefore, former law may govern the benefits of some members of the public employees' retirement system. The user is advised to ascertain which version of the statute is applicable. Earlier versions of the statutes can be found in prior editions of the Alaska Statutes or in the published Session Laws of Alaska.

## **SEC. 39.35.450. JOINT AND SURVIVOR OPTION.**

(a) Benefits payable under this section are in place of benefits payable under AS 39.35.370, 39.35.385, and former AS 39.35.460. Upon filing an application with the administrator or when a disabled employee first attains eligibility for normal retirement under AS 39.35.400(f) or 39.35.410(h), the employee shall designate the person who is the employee's spouse at the time of appointment to retirement as the contingent beneficiary. However, if the designation of the spouse is revoked under (c) of this section, the employee may designate a dependent approved by the administrator as the contingent beneficiary or may take normal or early retirement under AS 39.35.370 or 39.35.385 or, if the employee was first hired before July 1, 1996, benefit payments under the level income option under former AS 39.35.460. The administrator shall pay benefits under the option elected by the employee. The employee may elect an option that provides that the employee is entitled to receive a reduced benefit payable for life, and, after the employee's death, the contingent beneficiary is entitled to payments in the amount of

- (1) 75 percent of the reduced benefit payable for life; or
- (2) 50 percent of the reduced benefit payable for life.

(b) The aggregate of the pension payments expected to be paid to an employee and the contingent beneficiary under the options set out in (a) of this section shall be the actuarial equivalent of the pension that the employee is otherwise entitled to receive upon retirement.

(c) An employee may elect or change an option without the approval of the administrator if the election or change is filed in writing with the administrator before the effective date of the employee's retirement. An employee may revoke a joint and survivor option if the employee files with the administrator before the effective date of the employee's retirement a revocation and consent to the revocation signed by the employee's present spouse and each person entitled to benefits under a qualified domestic relations order on forms provided by the administrator. The administrator may waive the requirement for written consent from

(1) a person entitled under the order if the person cannot be located or for another reason established by regulation; or

(2) the spouse if

(A) the employee is not married;

(B) the employee was not married to the spouse during any period of the employee's employment with an employer;

(C) the spouse has no rights to the option because of the terms of a qualified domestic relations order;

(D) the spouse cannot be located;

(E) the employee and the spouse have been married for less than two years and the employee establishes that they are not cohabiting; or

(F) another reason is established under regulations of the administrator.

(d) A member, including a deferred vested member, may, regardless of age, elect a joint and survivor option any time before appointment to receive a retirement benefit.

(e) If either the employee or contingent beneficiary dies before the employee is appointed to retirement, the election becomes inoperative. Once the employee is appointed to retirement, the election is irrevocable. If a retired employee is reemployed and is subsequently reappointed to retirement, those benefits earned during the period of reemployment are subject to the initial election made under this section, unless the contingent beneficiary is deceased. If the contingent beneficiary is deceased, the benefits earned during

the period of reemployment are subject to AS 39.35.370 or this section if another contingent beneficiary was elected during the period of reemployment. All other benefits earned during prior periods of employment are subject to the election at the time the employee was appointed to retirement. If death occurs from nonoccupational causes during the period of reemployment, those benefits earned while reemployed are subject to AS 39.35.420(b). All other benefits earned during prior periods of employment are subject to the election at the time the employee was appointed to retirement. If death occurs from occupational causes during the period of reemployment, all benefits earned during all periods of employment are subject to AS 39.35.430(b) and (c).

(f) The employee and any person claiming to be a contingent beneficiary shall file with the administrator a marriage certificate, divorce or dissolution judgment, or other evidence necessary to determine the applicability of this section and the identity of any contingent beneficiary.

(g) If the administrator determines, based on the affidavit of the employee and other evidence that an employee is eligible to elect a form of payment other than a joint and survivor option under this section, and no contrary evidence is presented to the administrator within 60 days after the effective date of the employee's retirement, a claim under this section, made by a spouse or former spouse of the member, may not be paid if payment would result in an increase in actuarial liability to the plan.

(h) If an employee fails to elect an option under this section, and if no effective revocation is filed with the administrator, the employee is considered to have elected the option provided in (a)(2) of this section.

History - (Sec. 26 ch 143 SLA 1960; am Sec. 8 ch 235 SLA 1968; am Sec. 12 ch 159 SLA 1972; am Sec. 24 - 26 ch 1 SLA 1974; am Sec. 6 ch 81 SLA 1976; am Sec. 45 ch 128 SLA 1977; am Sec. 41 - 43 ch 117 SLA 1986; am Sec. 15 ch 4 FSSLA 1996; am Sec. 43 ch 68 SLA 2000)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, "plan" was substituted for "system" in this section.

Editors Notes - Section 44, ch. 4, FSSLA 1996 provides that nothing in that Act, which amended subsection (a), "modifies or terminates the terms of a collective bargaining agreement in effect on July 1, 1996." Under Sec. 45, ch. 4, FSSLA 1996, the provisions of that Act, which amended subsection (a), are not severable, notwithstanding AS 01.10.030.

AG Opinions - A qualified domestic relations order that names a member's ex-wife as the member's survivor is valid and should be accepted, and does not improperly eliminate the survivor rights of the member's future spouse, should he remarry before retirement. Oct. 2, 2002, Op. Att'y Gen.

Decisions - Applicability of benefits to same-sex couples. - Employee benefits programs, which included the joint and survivor annuities described in this section, violated the rights of same-sex couples under Alaska Const. art. I, Sec. 1, by covering married public employees but not domestic partners. Alaska Civ. Liberties Union v. State, 122 P.3d 781 (Alaska 2005).

**SEC. 39.35.451. SPOUSE SURVIVOR BENEFITS UNDER PUBLIC EMPLOYEES RETIREMENT ACT OF 1949. [REPEALED, SEC. 47 CH 59 SLA 2002].**

Repealed or Renumbered

**SEC. 39.35.455. RIGHTS UNDER QUALIFIED DOMESTIC RELATIONS ORDER.**

A former spouse shall be treated as a spouse or surviving spouse to the extent required by a qualified domestic relations order. Rights under the order do not take effect until the order is filed with the administrator.

History - (Sec. 44 ch 117 SLA 1986)

Decisions - Cited in Laing v. Laing, 741 P.2d 649 (Alaska 1987).

**SEC. 39.35.460. LEVEL INCOME OPTION. [REPEALED, SEC. 20 CH 4 FSSLA 1996].**

Repealed or Renumbered

**SEC. 39.35.470. OTHER FORMS OF PAYMENT. [REPEALED, SEC. 85 CH 59 SLA 1982; SEC. 75 CH 137 SLA 1982].**

Repealed or Renumbered

**SEC. 39.35.475. POST-RETIREMENT PENSION ADJUSTMENT.**

(a) Once each year the administrator shall increase benefit payments to eligible disabled members, to persons age 60 or older receiving benefits under this plan in the preceding calendar year, and to persons who have received benefits under this plan for at least five years who are not otherwise eligible for an increase under this section.

(b) The increase in benefit payments applies to total benefit payments except for the cost-of-living allowance under AS 39.35.480. The amount of the increase is a percentage of the current benefit equal to

(1) the lesser of 75 percent of the increase in the cost of living in the preceding calendar year or nine percent, for recipients who on July 1 are at least 65 years old and for members receiving disability benefits; and

(2) the lesser of 50 percent of the increase in the cost of living in the preceding calendar year or six percent, for recipients who on July 1 are at least 60 but less than 65 years old or for recipients who are less than 60 years old on July 1 but who have received benefits from the plan for at least five years.

(c) If a recipient was not receiving benefits during the entire preceding calendar year, the increase in benefits under this section shall be adjusted by multiplying it by the fraction whose numerator is the number of months for which benefits were received in the preceding calendar year and whose denominator is 12.

(d) If at the time of first receiving a retirement benefit a member was receiving a disability benefit under this plan, the administrator shall, at the time the member is appointed to retirement, increase the retirement benefit by a percentage equal to the total cumulative percentage increase that has been applied to the member's disability benefit under this section.

(e) When computing an occupational death benefit under AS 39.35.430 or 39.35.440 or a survivor's benefit under AS 39.35.450, adjustments granted to the deceased member or survivor under this section shall be included.

(f) An increase in benefit payments under this section is effective July 1 of each year and is based on the percentage increase in the consumer price index for urban wage earners and clerical workers for Anchorage, Alaska during the previous calendar year as determined by the United States Department of Labor, Bureau of Labor Statistics.

History - (Sec. 9 ch 235 SLA 1968; am Sec. 14 ch 159 SLA 1972; am Sec. 34 ch 146 SLA 1980; am Sec. 57 ch 137 SLA 1982; am Sec. 41 ch 82 SLA 1986; am Sec. 112 ch 9 FSSLA 2005)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, "plan" was substituted for "system" in this section.

Amendment Notes - The 2005 amendment, effective July 28, 2005, in subsection (a) substituted "plan" for "system" and made a stylistic change in the first sentence and added the second and third sentences.

Editors Notes - In general, a person's right to benefits under the state's public employee retirement systems vests when the person joins the system. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981). Therefore, former law may govern the benefits of some members of the teachers' retirement

system. The user is advised to ascertain which version of a particular statute is applicable. The version of this statute that was in effect immediately after the 1980 amendments read as follows:

“Sec. 39.35.475. POST RETIREMENT PENSION ADJUSTMENT. (a) When the administrator determines that the cost of living has increased and that the financial condition of the retirement fund permits, he shall increase benefit payments to persons receiving benefits under this system.

“(b) The amount of the increase in benefit payments may not exceed the greater of

“(1) the increase in the cost of living since the date of retirement; or

“(2) four percent of the retirement benefit compounded for each year of retirement.

“(c) If at the time of first receiving a retirement benefit a member was receiving a disability benefit under this system, the administrator shall include the time during which the member received the disability benefit in determining the number of years of retirement under this section.

“(d) An increase in benefit payments under this section is effective July 1 of the year for which the increase is granted.

“(e) The administrator shall implement this section by regulation.”

The 1982 amendment, effective July 1, 1982, substituted “lesser” for “greater” in the introductory language of subsection (b).

Section 49, ch 146, SLA 1980 provides: “The retirement benefit payable to a member of the public employees’ retirement system who is receiving a normal retirement benefit under AS 39.35.370, July 1, 1980, and who at the time of his retirement was receiving a disability pension under the public employees’ retirement system, shall be increased by a percentage equal to the percentage of all post-retirement pension adjustments payable under AS 39.35.475 during the period that the member was receiving a disability benefit.”

Under Sec. 112, ch. 9, FSSLA 2005, following amendment by sec. 34, ch. 146, SLA 1980, and until amended by sec. 41, ch. 82, SLA 1986, (a) of this section read: “(a) When the administrator determines that the cost of living has increased and that the financial condition of the retirement fund permits, the administrator shall increase benefit payments to persons receiving benefits under this plan. For purposes of this subsection, the financial condition of the fund would only permit an increase in benefits when the ratio of total fund assets to the accrued liability meets or exceeds 105 percent. In this subsection, “accrued liability” means the present value of all member benefits accrued by member service in this plan.”

Collateral Refs - Validity of legislation providing for additional retirement allowances for public employee previously retired, 27 ALR2d 1442.

### **SEC. 39.35.480. COST-OF-LIVING ALLOWANCE.**

(a) While residing in the state, a person receiving a benefit under AS 39.35.095 - 39.35.680 who is 65 years of age or older or who is receiving a disability benefit is entitled to receive a monthly cost-of-living allowance in addition to the basic benefit. The amount of this allowance shall be \$50 or 10 percent of the basic benefit, whichever is greater.

(b) A person receiving a cost-of-living allowance under this section shall notify the administrator when the person expects to be absent from the state for a continuous period that exceeds 90 days. After that notification, the person is no longer entitled to receive the monthly cost-of-living allowance, except that a person may be absent from the state for not more than six months without loss of the cost-of-living allowance if the absence is the result of illness and required by order of a licensed physician. Upon returning to the state, and upon notification to the administrator, the person is again entitled to receive the monthly cost-of-living allowance, commencing with the first monthly benefit payment made after notification of the person's return.

(c) While residing in the state, a public employee of the Territory of Alaska who participated in the Public Employees' Retirement Act established by ch. 41 SLA 1949, and who retired before June 22, 1951, is entitled to the cost-of-living allowance equal to 25 percent of the amount received under ch. 41 SLA 1949.

(d) For purposes of this section, "residing in the state" means domiciled and physically present in the state. A person's status as "residing in the state" does not change if the person is absent from the state for a continuous period of

(1) 90 days or less;

(2) six months or less, when ordered by a physician to be absent from the state; or

(3) any length of time while the person is a member of a reserve or auxiliary component of the armed forces of the United States, including the organized militia of Alaska, consisting of the Alaska National Guard, the Alaska Naval Militia, and the Alaska State Defense Force, and is called to active duty by the appropriate state or federal authority.

History - (Sec. 29 ch 143 SLA 1960; am Sec. 1 ch 109 SLA 1967; am Sec. 27 ch 1 SLA 1974; am Sec. 108 ch 127 SLA 1974; am Sec. 46 ch 128 SLA 1977; am Sec. 12, 13 ch 82 SLA 1979; am Sec. 42 ch 82 SLA 1986; am Sec. 2 ch 70 SLA 2003)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, "AS 39.35.095 - 39.35.680" was substituted for "this chapter" in this section.

Amendment Notes - The 2003 amendment, effective September 9, 2003, rewrote subsection (d).

Editors Notes - Section 57, ch. 82, SLA 1986 provides: "Sections 16, 22-23, 25-27, 42-45, and 50 of this Act apply only to members first hired under the Public Employees' Retirement System after June 30, 1986."

Decisions - Constitutionality. - Limiting cost-of-living allowance (COLA) payments to resident retirees does not violate the Equal Protection Clause of the Alaska Constitution; therefore, summary judgment was properly granted to the state in an action that challenged whether the denial of COLA payments to nonresidents was constitutional because the small payments were fairly and substantially related to their purpose, and they did not substantially infringe on the right of retirees to live elsewhere. *Pub. Empls. Ret. Sys. v. Gallant*, 153 P.3d 346 (Alaska 2007).

### **SEC. 39.35.485. MINIMUM BENEFIT.**

(a) An employee who is eligible for a benefit calculated in accordance with AS 39.35.370(c) is entitled to a benefit of at least \$25 a month for each year of credited service, not including adjustments made under AS 39.35.340 for military service, AS 39.35.350 for reinstatement of credited service, AS 39.35.360 for credit for earlier service, AS 39.35.370(c) for early retirement, AS 39.35.420 for nonoccupational death benefits, AS 39.35.450 for the survivor's option, former AS 39.35.460 for the level income option, AS 39.35.475 for the post-retirement pension adjustment, and AS 39.35.480 for the cost of living.

(b) [Repealed, Sec. 55 ch 128 SLA 1977].

History - (Sec. 15 ch 159 SLA 1972; am Sec. 16 ch 47 SLA 1974; am Sec. 14 ch 205 SLA 1975; am Sec. 24 ch 123 SLA 1976; am Sec. 55 ch 128 SLA 1977; am Sec. 35 ch 146 SLA 1980; am Sec. 58 ch 137 SLA 1982; am Sec. 16 ch 4 FSSLA 1996)

Delayed Amendment - of subsection (a). - Under Sec. 113, ch. 9, FSSLA 2005, effective June 30, 2010, subsection (a) of this section will read as follows: ""(a) An employee who is eligible for a benefit calculated in accordance with AS 39.35.370(c) is entitled to a benefit of at least \$25 a month for each year of credited service, not including adjustments made under AS 39.35.340 for military service, AS 39.35.360 for credit for earlier service, AS 39.35.370(c) for early retirement, AS 39.35.420 for nonoccupational death benefits, AS 39.35.450 for the survivor's option, former AS 39.35.460 for the level income option, AS 39.35.475 for the post-retirement pension adjustment, and AS 39.35.480 for the cost of living.""

Amendment Notes - The 2005 amendment, effective July 28, 2005, deleted “AS 39.35.350 for reinstatement of credited service,” following “for military service,” in subsection (a).

Editors Notes - Chapter 205, SLA 1975, which amended this section, was submitted to the voters by referendum and was rejected.

### **SEC. 39.35.490. DESIGNATION OF BENEFICIARY.**

(a) Each employee shall designate the beneficiary or beneficiaries to whom the administrator shall distribute benefits payable under AS 39.35.095 - 39.35.680 as a consequence of the employee’s death. Notwithstanding a previous designation of beneficiary, a person who is the spouse of an employee at the time of the employee’s death automatically becomes the designated beneficiary if the spouse was married to the employee during part of the employee’s employment for an employer

(1) except to the extent a qualified domestic relations order filed with the administrator provides for payment to a former spouse or other dependent of the employee; or

(2) unless the employee files a revocation of beneficiary accompanied by a written consent to the revocation signed by the present spouse and each person entitled under the order; however, consent of the present spouse is not required if the member and the present spouse had been married for less than two years on the date of the member’s death and if the member established when filing the revocation that the member and the present spouse were not cohabiting.

(b) Except as provided in (a) of this section, the designation may be changed or revoked by the employee without notice to the beneficiary or beneficiaries at any time. If an employee designates more than one beneficiary, each shares equally unless the employee specifies a different allocation or preference. The designation of beneficiary, a change or revocation of a beneficiary, or a consent to a revocation of a beneficiary shall be made on a form provided by the administrator and is not effective until filed with the administrator.

(c) If an employee fails to designate a beneficiary, or if no designated beneficiary survives the employee, the administrator shall pay the death benefit

- (1) to the surviving spouse or, if there is none surviving,
- (2) to the surviving children in equal parts or, if there is none surviving,
- (3) to the surviving parents in equal parts or, if there is none surviving,
- (4) to the employee’s estate.

(d) A person claiming entitlement to benefits payable under AS 39.35.095 - 39.35.680 as a consequence of an employee's death shall provide the administrator with a marriage certificate, divorce or dissolution decree, or other evidence of entitlement. Documents establishing entitlement may be filed with the administrator immediately after a change in the employee's marital status. If the administrator does not receive notification of a claim before the date 10 days after the employee's death, the person claiming entitlement to the benefits is not entitled to receive from the division of retirement and benefits any benefit already paid by the administrator.

History - (Sec. 30 ch 143 SLA 1960; am Sec. 47 ch 128 SLA 1977; am Sec. 59 ch 137 SLA 1982; am Sec. 45, 46 ch 117 SLA 1986)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, "AS 39.35.095 - 39.35.680" was substituted for "this chapter" in this section.

AG Opinions - A qualified domestic relations order that names a member's ex-wife as the member's survivor is valid and should be accepted, and does not improperly eliminate the survivor rights of the member's future spouse, should he remarry before retirement. Oct. 2, 2002, Op. Att'y Gen.

Collateral Refs - Rights in survival benefits under public pension or retirement plan as between designated beneficiary and heirs, legatees, or personal representative of deceased employee, 5 ALR3d 644.

### **SEC. 39.35.495. TIME LIMIT FOR APPLICATION.**

If no application for benefits or for refund has been filed with the administrator by July 1 following the date on which an inactive member, except an employee on leave-without-pay status or on layoff status, would attain age 75, or if no application for benefits or for refund has been filed with the administrator within the 50 years following the most recent date on which the employee was an active member, benefits or refunds may not be paid under AS 39.35.095 - 39.35.680 and the member's records may be destroyed.

History - (Sec. 40 ch 13 SLA 1980)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, "AS 39.35.095 - 39.35.680" was substituted for "this chapter" in this section.

### **SEC. 39.35.500. SAFEGUARD OF EMPLOYEE FUNDS HELD BY THE PLAN; TRANSFER TO OTHER PLANS.**

(a) Except as provided in AS 29.45.030(a)(1) or in (b) of this section, employee contributions and other amounts held in the plan are exempt from Alaska state and local taxes. Except as provided in this subsection and in (b) of this section, amounts held on behalf of, or payable to, any employee

or other person who is or may become eligible for benefits under the plan are not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge of any kind, either voluntary or involuntary, before being received by the person entitled to the amount under the terms of the plan. An attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, or otherwise dispose of a right to amounts held under the plan is void. However, an employee's right to receive benefits or the member's employee contribution account may be assigned

(1) under a qualified domestic relations order; or

(2) to a trust or similar legal device that meets the requirements for a Medicaid-qualifying trust under AS 47.07.020(f) and 42 U.S.C. 1396p(d)(4).

(b) An inactive member may elect to have the taxable portion of an inactive employee contribution account transferred directly to another plan or an individual retirement arrangement qualified under the federal Internal Revenue Code that accepts the transfer.

History - (Sec. 39 ch 143 SLA 1960; am Sec. 10 ch 235 SLA 1968; am Sec. 48 ch 128 SLA 1977; am Sec. 7 ch 62 SLA 1982; am Sec. 47 ch 117 SLA 1986; am Sec. 30 ch 106 SLA 1988; am Sec. 18 ch 31 SLA 1992; am Sec. 16 ch 102 SLA 1994; am Sec. 44, 45 ch 68 SLA 2000)

Revisors Notes - In 1992, "AS 29.45.030(a)(1)" was substituted for "AS 29.45.030(a)(1)(D)" to correct a manifest error in Sec. 18, ch. 31, SLA 1992.

Under sec. 144, ch. 9, FSSLA 2005, "plan" was substituted for "system" in this section.

Decisions - Amendment permitting assignment pursuant to domestic relations order. - The 1986 amendment to this section, permitting retirement benefits to be assigned pursuant to a qualified domestic relations order, merely codified the means by which to distribute an asset, and, as such, the amendment was procedural and could be applied retroactively. *Rice v. Rice*, 757 P.2d 60 (Alaska 1988).

## **SEC. 39.35.505. EXEMPTION OF EMPLOYEE FUNDS AND BENEFITS.**

Employee contributions and other amounts held in the plan and retirement benefits payable under AS 39.35.095 - 39.35.680 are exempt from levy to enforce the collection of a debt as provided in AS 09.38 (exemptions).

History - (Sec. 7 ch 62 SLA 1982; am Sec. 31 ch 106 SLA 1988)

Revisors Notes - Enacted as AS 39.35.500(b). Renumbered in 1982.

Under sec. 144, ch. 9, FSSLA 2005, "AS 39.35.095 - 39.35.680" was substituted for "this chapter" and "plan" was substituted for "system" in this section.

### **SEC. 39.35.510. VOLUNTARY WAIVER OF BENEFITS.**

A retired employee may, in writing, request the administrator to suspend, for any period of time, payment of all or part of the benefits to which the employee is entitled. The administrator shall grant the request and may not require the retired employee to disclose a reason for desiring the suspension. Amounts that are suspended pursuant to the request are forfeited. The retired employee may subsequently terminate the suspension by filing a written notice with the administrator that states a desire to revoke the suspension. Upon receipt of the notice, the administrator shall authorize resumption of the retired employee's regular pension payments.

History - (Sec. 40 ch 143 SLA 1960; am Sec. 49 ch 128 SLA 1977)

### **SEC. 39.35.520. ADJUSTMENTS.**

(a) When a change or error is made in the records maintained by the plan or in the contributions made on behalf of an employee or an error is made in computing a benefit, and, as a result, an employee or beneficiary is entitled to receive from the plan more or less than the employee would have been entitled to receive had the records or contributions been correct or had the error not been made, (1) the records, contributions, or error shall be corrected, and (2) as far as practicable, future payments or benefit entitlement shall be adjusted so that the actuarial equivalent of the pension or benefit to which the employee or beneficiary was correctly entitled shall be paid. An adjustment to contributions shall be picked up by the employer under AS 39.35.160 or treated as an adjustment to the employer's contributions under AS 39.35.255, depending upon the nature of the adjustment. If no future payment is due, a person who was paid any amount to which the person was not entitled is liable for repayment of that amount, and a person who was not paid the full amount to which the person was entitled shall be paid the balance of that amount.

(b) An adjustment that requires the recovery of benefits may not be made under this section if

(1) the incorrect benefit was first paid two years or more before the member or beneficiary was notified of the error;

(2) the error was not the result of erroneous information supplied by the member or beneficiary; and

(3) the member or beneficiary did not have reasonable grounds to believe that the amount of the benefit was in error.

(c) At least quarterly, the administrator shall report to the commissioner of administration on all situations since the administrator's last report in which an adjustment has been prohibited under (b) of this section. If the commissioner of administration finds that there is reason to believe that one or more of the conditions set out in (b) of this section have not been met, the administrator shall notify the member or beneficiary that an adjustment will be made to recover the overpayment. A member or beneficiary who receives notice of adjustment under this subsection may file a request with the commissioner of administration for a waiver of the adjustment under AS 39.35.522. An adjustment may not be required while the waiver request is pending.

(d) The plan shall pay interest on amounts owed to a member or beneficiary. Interest shall be charged on amounts owed to the plan by a member or beneficiary if the amount owed is the result of erroneous information supplied by the member or beneficiary, or the member or beneficiary had reasonable grounds to believe the amount of the benefit was in error. The interest paid under this subsection is at the rate established by regulation for indebtedness contributions owed. Interest accrues from the date on which the correct payment was due and continues until an actuarial adjustment to the benefit is effective or the amount owed is paid. Accrued interest in amounts less than the limit established in regulation for writing off small indebtedness and refund balances may not be collected or paid under this subsection.

History - (Sec. 42 ch 143 SLA 1960; am Sec. 4 ch 81 SLA 1976; am Sec. 2 ch 15 SLA 1984; am Sec. 43 ch 82 SLA 1986; am Sec. 41 ch 59 SLA 2002; am Sec. 114, 132 ch 9 FSSLA 2005; am Sec. 14 ch 13 SLA 2008)

Revisors Notes - Section 114, ch. 9, FSSLA 2005, amended (c) of this section; sec. 132 of the same Act repealed that subsection. The actions had the same effective date. The legislative history of Senate Bill 141, the source of the Act, suggests that the proposed amendment of (c) of this section by the House State Affairs Committee was intended to effect change of the Senate-passed bill. The Senate-passed bill had proposed to repeal subsection (c), thereby eliminating independent review of recovery of benefits that had been allegedly paid in error. The House committee proposed to retain provisions relating to waiver and adjustment of benefits allegedly paid in error. The committee's version amended subsection (c) to provide a mechanism by which review or oversight would continue notwithstanding the Act's elimination of the Public Employees' Retirement Board that had considered them, but failed to eliminate the reference to (c) in the bill section calling for the subsection's repeal. Under AS 01.05.031(b)(7), to correct a manifest error by way of a neglected deletion and to give effect to the language added by the House, to which the Senate later agreed, the conflicting provision that repeals subsection (c) is not given effect.

Under sec. 144, ch. 9, FSSLA 2005, "plan" was substituted for "system" in this section.

Amendment Notes - The 2002 amendment, effective June 20, 2002, in the first sentence in subsection (a) inserted “in the contributions made on behalf of an employee,” substituted “is entitled to receive” for “receives,” inserted “contributions” in two places, and inserted “or benefit entitlement”; and added the second sentence.

The 2005 amendment, effective July 28, 2005, in subsection (c) substituted “At least quarterly” for “At each regularly scheduled meeting of the Public Employees’ Retirement Board” at the beginning, “commissioner of administration” for “board” in two places, “file a request with the commissioner of administration” for “appeal to the board”, and “waiver request” for “appeal”.

The 2008 amendment, effective July 1, 2008, substituted “AS 39.35.255” for “AS 39.35.270” in the second sentence of subsection (a).

Editors Notes - Although Sec. 57, ch. 82, SLA 1986 provided that the amendment to this section made by Sec. 43, ch. 82, SLA 1986, which added subsection (d), applied only to members first hired under the Public Employees’ Retirement System after June 30, 1986, Sec. 57, ch. 82, SLA 1986 was amended by Sec. 34, ch. 106, SLA 1988 to delete Sec. 43, ch. 82, SLA 1986 from the sections applicable only to members first hired after June 30, 1986.

Decisions - Recapture under earlier provisions of AS 39.35.150 not an “adjustment.” - Public Employees’ Retirement System Board’s recalculation of member benefits under earlier provisions of AS 39.35.150(a) was not an “adjustment” triggering application of earlier requirements of AS 39.35.520(b), which prohibits downward adjustments under certain circumstances. *Alford v. State*, 195 P.3d 118 (Alaska 2008).

## **SEC. 39.35.522. WAIVER OF ADJUSTMENTS.**

(a) Upon request by an affected member or beneficiary under (b) of this section, the commissioner of administration may waive an adjustment or any portion of an adjustment made under AS 39.35.520 if, in the opinion of the commissioner of administration,

(1) the adjustment or portion of the adjustment will cause undue hardship to the member or beneficiary;

(2) the adjustment was not the result of erroneous information supplied by the member or beneficiary;

(3) before the adjustment was made, the member or beneficiary received confirmation from the administrator that the employee’s or beneficiary’s records were correct; and

(4) the member or beneficiary had no reasonable grounds to believe the employee's or beneficiary's records were incorrect before the adjustment was made.

(b) In order to obtain consideration of a waiver under this section, the affected member or beneficiary must appeal to the commissioner of administration in writing within 30 days after receipt of notice that the records have been adjusted.

(c) [Repealed, Sec. 132 ch 9 FSSLA 2005].

(d) A decision of the commissioner of administration under this section to deny a waiver under this section may be appealed to the office of administrative hearings. The office of administrative hearings may reverse the decision of the commissioner and may impose conditions on the granting of a waiver which it considers equitable. These conditions may include requiring the member or beneficiary to make additional contributions to the plan.

(e) [Repealed, Sec. 132 ch 9 FSSLA 2005].

(f) [Repealed, Sec. 57 ch 68 SLA 2000].

(g) [Repealed, Sec. 57 ch 68 SLA 2000].

History - (Sec. 9 ch 174 SLA 1978; am Sec. 41 ch 13 SLA 1980; am Sec. 60 ch 137 SLA 1982; am Sec. 46 - 48, 57 ch 68 SLA 2000; am Sec. 115, 132 ch 9 FSSLA 2005; am Sec. 70 ch 20 SLA 2007)

Revisors Notes - In 2000, in subsection (e), "AS 39.35.047(c)" was substituted for "AS 39.35.077(c)" to reflect the 2000 renumbering of AS 39.35.077.

Under sec. 144, ch. 9, FSSLA 2005, "plan" was substituted for "system" in this section. Also, in 2005, in complying with the instruction in Sec. 144(d), ch. 9, FSSLA 2005, to change "board" to "commissioner" in (b) and (d) of this section, the words "of administration" were added to maintain consistency with the amendment of (a) of this section by Sec. 115, ch. 9, FSSLA 2005.

Amendment Notes - The 2005 amendment, effective July 28, 2005, in subsection (a), in the introductory language substituted "request" for "appeal" in one place and "commissioner of administration" for "board" in two places, and deleted the former repeal lines for paragraphs (2) and (3), redesignating subsequent paragraphs accordingly; and repealed subsections (c) and (e).

The 2007 amendment, effective June 7, 2007, divided the former first sentence of subsection (d) into the present first and second sentences, and rewrote both.

Decisions - Hardship not found. - Application of recapture requirements under earlier version of AS 39.35.150(b) to early retirees' benefits from their first round of employment with the state did not entitle them to a hardship waiver under this section because reduction in the retirees' benefits was not an "adjustment" under AS 39.35.520(a). *Alford v. State*, 195 P.3d 118 (Alaska 2008).

**SEC. 39.35.525. LIMITATION ON USE OF CREDITED SERVICE AS PEACE OFFICER OR FIREMAN. [REPEALED, SEC. 37 CH 106 SLA 1988].**

Repealed or Renumbered

**SEC. 39.35.527. ELECTION TO TERMINATE COVERAGE AS A PEACE OFFICER OR FIRE FIGHTER.**

(a) Any active member may elect to irrevocably relinquish peace officer or fire fighter status with the plan and to retain all credited service as if it had been acquired as a member other than a peace officer or fire fighter.

(b) In order to relinquish peace officer or fire fighter status with the plan, a person must be an active member and must file a written request with the administrator by July 1, 1984, or within six months after employment as a peace officer or fire fighter, whichever occurs later. No person has more than one opportunity to exercise this option.

(c) As soon as possible after the relinquishment, the administrator shall refund to a person who relinquishes peace officer or fire fighter status under this section a refund equal to the amount by which the balance of the person's accumulated mandatory contributions plus interest exceeds the balance which would exist if all service credit had been acquired as a member other than a peace officer or fire fighter.

(d) A written request to relinquish peace officer or fire fighter status is irrevocable upon filing with the administrator.

History - (Sec. 1 ch 27 SLA 1983)

Revisors Notes - In 1989, the term "fire fighter" was substituted for "fireman" in this section under Sec. 60, ch. 50, SLA 1989.

Under sec. 144, ch. 9, FSSLA 2005, "plan" was substituted for "system" in this section.

**SEC. 39.35.530. LIMIT ON PENSION.**

An employee may not simultaneously receive a pension under more than one section of AS 39.35.095 - 39.35.680. However, benefits under AS 39.35.420(b), 39.35.430, 39.35.440 or 39.35.450 shall be paid in addition to the benefits or service credit a person is entitled to receive because of the person's own membership in the retirement plan. An employee may not (1) receive duplicate credit under this plan for the same period of service, (2) receive more than one year of service credit in the course of any calendar year, or (3) receive a benefit while accruing service credit under this plan, except as provided in this section.

History - (Sec. 42 ch 143 SLA 1960; am Sec. 61 ch 137 SLA 1982)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, "AS 39.35.095 - 39.35.680" was substituted for "this chapter" and "plan" was substituted for "system" in this section.

**SEC. 39.35.535. MEDICAL BENEFITS.**

(a) Except as provided in (d) of this section, the following persons are entitled to major medical insurance coverage under this section:

(1) for employees first hired before July 1, 1986,

(A) an employee who is receiving a monthly benefit from the plan and who has elected coverage;

(B) the spouse and dependent children of the employee described in (A) of this paragraph;

(C) the surviving spouse of a deceased employee who is receiving a monthly benefit from the plan and who has elected coverage;

(D) the dependent children of a deceased employee who are dependent on the surviving spouse described in (C) of this paragraph;

(2) for members first hired on or after July 1, 1986,

(A) an employee who is receiving a monthly benefit from the plan and who has elected coverage for the employee;

(B) the spouse of the employee described in (A) of this paragraph if the employee elected coverage for the spouse;

(C) the dependent children of the employee described in (A) of this paragraph if the employee elected coverage for the dependent children;

(D) the surviving spouse of a deceased employee who is receiving a monthly benefit from the plan and who has elected coverage;

(E) the dependent children of a deceased employee who are dependent on the surviving spouse described in (D) of this paragraph if the surviving spouse has elected coverage for the dependent children.

(b) Except as provided in (d) of this section, after an election of coverage under this section, major medical insurance coverage takes effect on the same date that benefits begin, and stops when the member or survivor is no longer eligible to receive a monthly benefit. The coverage for persons age 65 or older is the same coverage available for a person under 65 years of age. The benefits payable to persons age 65 or older supplement any benefits provided under the federal old age, survivors and disability insurance program. The medical premium and optional insurance premiums owed by a member or survivor shall be deducted from the benefit owed to the member or survivor before payment of the benefit.

(c) A benefit recipient may elect major medical insurance coverage in accordance with regulations and under the following conditions:

(1) a person, other than a disabled member or a disabled member who is appointed to normal retirement, must pay an amount equal to the full monthly group premium for retiree major medical insurance coverage if the person is

(A) younger than 60 years of age and has less than

(i) 25 years of credited service as a peace officer under AS 39.35.360 and 39.35.370; or

(ii) 30 years of credited service under AS 39.35.360 and 39.35.370 that is not service as a peace officer; or

(B) of any age and has less than 10 years of credited service;

(2) a person is not required to make premium payments for retiree major medical coverage if the person

(A) is a disabled member;

(B) is a disabled member who is appointed to normal retirement;

(C) is 60 years of age or older and has at least 10 years of credited service; or

(D) has at least

(i) 25 years of credited service as a peace officer under AS 39.35.360 and 39.35.370; or

(ii) 30 years of credited service under AS 39.35.360 and 39.35.370 not as a peace officer.

(d) Receipt under a qualified domestic relations order of a monthly benefit from the plan does not entitle a person or the person's spouse or child to insurance coverage under (a) of this section. However, a member's former spouse who receives a monthly benefit under a qualified domestic relations order is entitled to receive major medical insurance coverage if the former spouse

(1) elects the coverage within 60 days after the first monthly benefit paid under the order is mailed first class or otherwise delivered; and

(2) pays the premium established by the administrator for the coverage.

(e) The administrator shall inform members who have requested appointment to retirement that the health insurance coverage available to retired members may be different from the health insurance coverage provided to employees. The administrator shall also notify those members of time limits for selecting optional health insurance coverage and whether the election is irrevocable. A member who has requested appointment to retirement shall indicate in writing on a form provided by the administrator that the member has received the information required by this subsection and whether the member has chosen to receive optional health insurance coverage.

(f) On and after July 1, 2007, benefits under this section shall be provided in part by the Alaska retiree health care trust established under AS 39.30.097(a).

History - (Sec. 2 ch 200 SLA 1975; am Sec. 62 ch 137 SLA 1982; am Sec. 44, 45 ch 82 SLA 1986; am Sec. 48, 49 ch 117 SLA 1986; am Sec. 3 ch 14 SLA 1992; am Sec. 17 ch 4 FSSLA 1996; am Sec. 49 ch 68 SLA 2000; am Sec. 10 ch 57 SLA 2001; am Sec. 116 ch 9 FSSLA 2005; am Sec. 71 ch 20 SLA 2007)

Revisors Notes - Subsection (d) was enacted as (c). Renumbered in 1986. Minor word changes were made in 1986 to reconcile amendments to the section made by chapters 82 and 117, SLA 1986.

Under sec. 144, ch. 9, FSSLA 2005, "plan" was substituted for "system" in this section.

Amendment Notes - The 2001 amendment, effective July 1, 2001, rewrote subsection (c).

The 2005 amendment, effective January 1, 2006, rewrote subsection (a).

The 2007 amendment, effective June 7, 2007, added subsection (f).

Editors Notes - In general, a person's right to benefits under the state's public employee retirement systems vests when the person joins the system. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981). Therefore, former law may govern the benefits of some members of the public employees' retirement system. The user is advised to ascertain which version of the statute is applicable. Earlier versions of the statutes can be found in prior editions of the Alaska Statutes or in the published Session Laws of Alaska.

Provisions relating to federal old-age, survivors, and disability insurance benefits may be found in 42 U.S.C. 301 - 1397f (Social Security Act).

Section 57, ch. 82, SLA 1986 provides: "Sections 16, 22-23, 25-27, 42-45, and 50 of this Act apply only to members first hired under the Public Employees' Retirement System after June 30, 1986."

Section 44, ch. 4, FSSLA 1996 provides that nothing in that Act, which amended subsection (c), "modifies or terminates the terms of a collective bargaining agreement in effect on July 1, 1996." Under Sec. 45, ch. 4, FSSLA 1996, the provisions of that Act, which amended subsection (c), are not severable, notwithstanding AS 01.10.030.

Decisions - Applicability of benefits to same-sex couples. - Employee benefits programs, which included the post-retirement health insurance described in this section, were held violative of the rights of same-sex couples under Alaska Const. art. I, Sec. 1, where programs covered married public employees but not domestic partners. *Alaska Civ. Liberties Union v. State*, 122 P.3d 781 (Alaska 2005).

Cited in *Martin v. Martin*, 52 P.3d 724 (Alaska 2002).

**SEC. 39.35.540. MINIMUM BENEFIT. [REPEALED, SEC. 75 CH 137 SLA 1982].**

Repealed or Renumbered

**SEC. 39.35.541. ACTUARIAL REDUCTION OF BENEFIT.**

If, as a result of service credit claimed for which there is a corresponding indebtedness existing at retirement, the member's retirement benefit is actuarially reduced and the resultant benefit is less than it would have been if the service credit had not been claimed, the retirement benefit shall be equal to the amount it would have been had the service credit not been claimed.

History - (Sec. 63 ch 137 SLA 1982)

**SEC. 39.35.545. DUPLICATE BENEFITS.**  
**[REPEALED, SEC. 6 CH 81 SLA 1976].**

Repealed or Renumbered

**SEC. 39.35.546. STATE AND FEDERAL TAXATION OF BENEFITS.**

(a) Benefits of AS 39.35.095 - 39.35.680 are exempt from Alaska state and municipal income taxes.

(b) Benefits paid under AS 39.35.095 - 39.35.680 may be subject to federal income taxes as provided in 26 U.S.C. 72.

History - (Sec. 17 ch 109 SLA 1970; am Sec. 50 ch 128 SLA 1977; am Sec. 42 ch 59 SLA 2002)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, "AS 39.35.095 - 39.35.680" was substituted for "this chapter" in this section.

Amendment Notes - The 2002 amendment, effective June 20, 2002, added subsection (b).

**SEC. 39.35.547. EFFECT OF AMENDMENTS.**

(a) An amendment of AS 39.35.095 - 39.35.680 is not retroactive unless its retroactivity is expressly stated in the amendment.

(b) The monthly amount of a benefit payable under AS 39.35.095 - 39.35.680 shall be determined in accordance with the provisions of AS 39.35.095 - 39.35.680 in effect on the date of termination of the member's last segment of employment.

History - (Sec. 5 ch 81 SLA 1976; am Sec. 42 ch 13 SLA 1980)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, "AS 39.35.095 - 39.35.680" was substituted for "this chapter" in this section.

Cross References - For general provision that no statute is retroactive unless expressly stated, see AS 01.10.090.

Editors Notes - In general, a person's right to benefits under the state's public employee retirement systems vests when the person joins the system. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981). Therefore, former law may govern the benefits of some members of the public employees' retirement system. The user is advised to ascertain which version of a particular statute is applicable. Earlier versions of the statutes can be found in prior editions of the Alaska Statutes or in the published Session Laws of Alaska.

Decisions - Constitutionality of 1976 amendment of AS 39.35.410 and 39.35.430. - Insofar as the vested rights of those public safety employees hired before July 1, 1976, who choose to receive benefits under the public employees retirement system in effect at the time they were hired were diminished by the 1976 amendment of AS 39.35.410(d) and (g) and former 39.35.430(a) and 39.35.430(b), the amended subsections were violative of Alaska Const., art. XII, Sec. 7 as applied to those employees. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981).

Quoted in *Rice v. Rice*, 757 P.2d 60 (Alaska 1988).

## **ARTICLE 08. PARTICIPATION BY POLITICAL SUBDIVISIONS AND PUBLIC ORGANIZATIONS**

**SEC. 39.35.550. - 39.35.590L REQUEST BY POLITICAL  
SUBDIVISION TO PARTICIPATE AND ADOPTION OF  
RESOLUTION; REQUEST BY PUBLIC ORGANIZATION  
TO PARTICIPATE AND ADOPTION OF RESOLUTION;  
SURVEY TO DETERMINE ESTIMATED COST; EFFECTIVE  
DATE OF PARTICIPATION; DESIGNATION OF ELIGIBLE  
EMPLOYEES AND AGREEMENT TO CONTRIBUTE.  
[REPEALED, SEC. 24 CH 13 SLA 2008].**

Repealed or Renumbered

Article Notes - Legislative History Reports. For governor's transmittal letter for ch. 20, SLA 2007 (SB 123), proposing needed corrections and clarifications of statutes enacted as part of the 2005 legislation establishing defined contributions retirement plans and making related amendments to defined benefit retirement plans, see 2007 Senate Journal 567 - 570.

**SEC. 39.35.600. ELIGIBLE EMPLOYEES BOUND TO PLAN.**

The eligible employees of a participating political subdivision or public organization are bound by the provisions of this plan and are entitled to the benefits provided under it.

History - (Sec. 44 e ch 143 SLA 1960)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, "plan" was substituted for "system" in this section.

**SEC. 39.35.610. TRANSMITTAL OF CONTRIBUTIONS TO ADMINISTRATOR; CLAIMS AGAINST FUNDS OF AN EMPLOYER.**

(a) The contributions of an employer and the contributions of its employees shall be transmitted to the administrator as soon as practicable after the close of the payroll period for which the contributions are made. If an employer is delinquent in transferring the contributions for more than 15 days, interest shall be assessed on the outstanding contributions at one and one-half times the most recent actuarially determined rate of earnings for the retirement plan from the date that the contributions were originally due.

(b) If contributions are not submitted within the prescribed time limit, the amount of contributions and interest due may be claimed by the administrator from any agency of the state or political subdivision that has in its possession funds of the employer or that is authorized to disburse funds to the employer that are not restricted by statute or appropriation to a specific purpose. The amount claimed shall be certified by the administrator as sufficient to pay the contributions and interest due from the employer. The agency shall submit the amount claimed, or the amount of funds of the employer subject to the administrator's claim that are in the agency's possession, whichever is less, to the administrator for deposit in the retirement fund and the Alaska retiree health care trust.

History - (Sec. 44 f ch 143 SLA 1960; am Sec. 28 ch 1 SLA 1974; am Sec. 53 ch 128 SLA 1977; am Sec. 72 ch 20 SLA 2007; am Sec. 15 ch 13 SLA 2008)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, "plan" was substituted for "system" in this section.

Amendment Notes - The 2007 amendment, effective June 7, 2007, added subsection (b).

The 2008 amendment, effective July 1, 2008, substituted "agency shall submit the amount claimed, or the amount of funds of the employer subject to the administrator's claim that are in the agency's possession, whichever is less" for "amount claimed shall be submitted" in the last sentence of subsection (b).

**SEC. 39.35.615. EFFECT OF TERMINATION BY AMENDMENT OF AGREEMENT.**

(a) A political subdivision or public organization may request that its participation agreement be amended. The request may be made only after adoption of a resolution by the legislative body of the political subdivision and approval of the resolution by the person required by law to approve the

resolution, or, in the case of a public organization, after adoption of a resolution by the governing body of that public organization. A certified copy of the resolution shall be filed with the administrator. An employer may not award past service to employees added to its participation agreement. When an employer requests to amend its participation agreement to add an elected official, the plan may cover that elected official only if the employer pays compensation to the elected official, for services as an elected official, in the amount of at least \$2,001 a month. If a political subdivision or public organization amends its participation agreement so as to terminate coverage of a department, group, or other classification of employees, each employee whose coverage is so terminated, regardless of the employee's employment status at the date of termination, shall be considered fully vested in actuarially adjusted accrued retirement benefits as of the date of termination, unless

(1) the employee's contributions have been refunded; or

(2) the political subdivision or public organization amended its participation agreement to exclude coverage for the affected department, group, or other classification of employees at the written request of a majority of the employees employed in that department, group, or other classification at the time the request was made.

(b) Each employee whose coverage is terminated must, within 60 days after the date of termination, inform the administrator, in writing, whether the employee wishes to obtain a refund or a vested benefit.

(c) Each employee who elects to obtain a refund shall receive a refund of the balance of the employee contribution account. The vesting in accrued benefits for each employee who elects to obtain a refund is voided upon receipt of the refund, and the corresponding credited service may not be reinstated under AS 39.35.095 - 39.35.680. A partial refund may not be allowed under this section.

(d) [Repealed, Sec. 116(a) ch 20 SLA 2007].

(e) [Repealed, Sec. 24 ch 13 SLA 2008].

(f) [Repealed, Sec. 116(a) ch 20 SLA 2007].

(g) [Repealed, Sec. 24 ch 13 SLA 2008].

(h) [Repealed, Sec. 24 ch 13 SLA 2008].

(i) Termination of coverage of a department, group, or other classification of employees does not bar future coverage of that department, group, or classification if the employer is current with payments on amounts due under AS 39.35.625. If coverage of a department, group, or classification

is terminated under (a) of this section and the employer later amends its participation agreement to provide renewed coverage of that department, group, or classification, an affected employee may be credited only with future service.

History - (Sec. 44 ch 13 SLA 1980; am Sec. 65, 66 ch 137 SLA 1982; am Sec. 50 ch 68 SLA 2000; am Sec. 73, 116(a) ch 20 SLA 2007; am Sec. 16, 17, 24 ch 13 SLA 2008)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, “AS 39.35.095 - 39.35.680” was substituted for “this chapter” in this section.

Amendment Notes - The 2007 amendment, effective June 7, 2007, repealed subsections (d) and (f), and added subsections (g) and (h).

The 2008 amendment, effective July 1, 2008, inserted the fourth and fifth sentences of subsection (a), repealed subsections (e), (g), and (h), and added subsection (i).

## **SEC. 39.35.620. TERMINATION OF PARTICIPATION.**

(a) If the contributions are not transmitted to the commissioner of administration within the prescribed time limit, the commissioner may grant an extension. If the political subdivision or public organization is in default at the end of the extension, participation in the plan is terminated, and it shall be sent notice of termination.

(b) All employees of the terminating employer whose contributions have not been refunded, regardless of their employment status at the date of termination, shall be considered fully vested in their adjusted accrued retirement benefits as of the date of termination of the employer.

(c) [Repealed, Sec. 116(a) ch 20 SLA 2007].

(d) Each employee of a terminating employer must, within 60 days of the employer’s termination of participation, inform the administrator, in writing, whether the employee wishes to obtain a refund or a vested benefit.

(e) Each employee who elects to obtain a refund shall receive a refund of the balance, determined as of the date of the employer’s termination of participation, of the employee contribution account. The vesting in accrued benefits for each employee who elects to receive a refund is voided upon receipt of the refund and corresponding credited service may not be reinstated under AS 39.35.095 - 39.35.680. A partial refund may not be allowed under this section.

(f) [Repealed, Sec. 116(a) ch 20 SLA 2007].

(g) [Repealed, Sec. 24 ch 13 SLA 2008].

(h) [Repealed, Sec. 116(a) ch 20 SLA 2007].

(i) [Repealed, Sec. 24 ch 13 SLA 2008].

(j) [Repealed, Sec. 24 ch 13 SLA 2008].

(k) Termination of an employer's participation in the plan does not bar future participation in the system by that employer if the employer is current with payments on amounts due under AS 39.35.625. If a previously terminated employer returns to the system, the employer may only participate in the plan established under AS 39.35.700 - 39.35.990. Employees may be credited under AS 39.35.700 - 39.35.990 only with service subsequent to the date of return.

History - (Sec. 44 g ch 143 SLA 1960; am Sec. 29 - 35 ch 1 SLA 1974; am Sec. 109 ch 127 SLA 1974; am Sec. 45 ch 13 SLA 1980; am Sec. 67 ch 137 SLA 1982; am Sec. 74, 116(a) ch 20 SLA 2007; am Sec. 18, 24 ch 13 SLA 2008)

Revisors Notes - The intent of the amendment made by Sec. 109, ch. 127, SLA 1974, was to bring the former language of AS 39.35.620(b) into conformity with art. I, Sec. 3 of the Constitution of the State of Alaska. As the reenactment of that subsection by Sec. 29, ch. 1, SLA 1974 removed the necessity for the change in ch. 127, the reenacted version contained in ch. 1, SLA 1974 prevails.

Under sec. 144, ch. 9, FSSLA 2005, "AS 39.35.095 - 39.35.680" was substituted for "this chapter" and "plan" was substituted for "system" in this section.

Amendment Notes - The 2007 amendment, effective June 7, 2007, repealed subsections (c), (f), and (h), and added subsections (i) and (j).

The 2008 amendment, effective July 1, 2008, repealed subsections (g), (i), and (j), and added subsection (k).

## **SEC. 39.35.625. TERMINATION COSTS.**

(a) Notwithstanding AS 39.35.255, an employer that terminates participation of a department, group, or other classification of employees in the plan under AS 39.35.615 or that terminates participation in the plan under AS 39.35.620 shall pay to the plan each payroll period until the past service liability of the plan is extinguished an amount calculated by applying the current past service contribution rate adopted by the board to the greater of total base salaries paid

(1) during the payroll period to employees in positions for which coverage has been terminated;

(2) at the time of termination to employees in positions for which coverage has been terminated; or

(3) during the corresponding payroll period for the fiscal year ending June 30, 2008, to employees in positions for which coverage has been terminated.

(b) Notwithstanding (a) of this section, the administrator may enter into a payment plan acceptable to the administrator for payment of an employer's liability for termination costs. Termination costs not paid as prescribed by (a) of this section or in accordance with an approved payment plan may be collected by the administrator in accordance with AS 39.35.610(b).

(c) An employer requesting termination of all participation in the plan, termination of participation in the plan of a department, group, or other classification of employees, or a payment plan for payment of termination costs shall pay the cost associated with obtaining a termination cost study associated with the employer's termination.

History - (Sec. 19 ch 13 SLA 2008)

Effective Date Notes - Section 27, ch. 13, SLA 2008 makes this section effective July 1, 2008.

### **SEC. 39.35.630. DISTRIBUTION.**

A distribution made as a result of termination of participation by an employer may, to the extent that no discrimination in value results, be paid in cash or in annuity contracts, in the discretion of the board.

History - (Sec. 44 h ch 143 SLA 1960)

### **SEC. 39.35.640. CONCLUSIVENESS OF ACTION TAKEN UPON TERMINATION.**

In making a distribution, the determinations, divisions, appraisals, apportionments, and allotments made are final and conclusive and not subject to question.

History - (Sec. 44 i ch 143 SLA 1960)

### **SEC. 39.35.650. REFUNDS TO EMPLOYERS.**

An employer may not receive an amount from the plan, except as provided under AS 39.35.115(e).

History - (Sec. 44 i ch 143 SLA 1960; am Sec. 46 ch 13 SLA 1980; am Sec. 32 ch 106 SLA 1988; am Sec. 75 ch 20 SLA 2007; am Sec. 20 ch 13 SLA 2008)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, “plan” was substituted for “system” in this section.

Amendment Notes - The 2007 amendment, effective June 7, 2007, substituted “AS 39.35.115(e), 39.35.615(e), or” for “AS 39.35.615(e) and.”

The 2008 amendment, effective July 1, 2008, deleted “39.35.615(3) or 39.35.620(g)” at the end of the section.

## **ARTICLE 09. PROVISIONS GENERALLY APPLICABLE TO AS 39.35.095 - 39.35.680**

### **SEC. 39.35.660. NONGUARANTEED EMPLOYMENT.**

AS 39.35.095 - 39.35.680 is not a contract of employment between an employer and an employee, nor does it confer a right of an employee to be continued in the employment of an employer, nor is it a limitation of the right of an employer to discharge an employee with or without cause.

History - (Sec. 38 ch 143 SLA 1960)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, “AS 39.35.095 - 39.35.680” was substituted for “this chapter” in this section.

Article Notes - Legislative History Reports. For governor’s transmittal letter for ch. 20, SLA 2007 (SB 123), proposing needed corrections and clarifications of statutes enacted as part of the 2005 legislation establishing defined contributions retirement plans and making related amendments to defined benefit retirement plans, see 2007 Senate Journal 567 - 570.

### **SEC. 39.35.670. FRAUD.**

A person who knowingly makes a false statement, or falsifies or permits to be falsified a record of this plan, in an attempt to defraud the plan is guilty of a class A misdemeanor.

History - (Sec. 41 ch 143 SLA 1960; am Sec. 51 ch 68 SLA 2000)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, “plan” was substituted for “system” in this section.

### **SEC. 39.35.672. PENSION FORFEITURE.**

The provisions of AS 37.10.310 apply to pension benefits under AS 39.35.095 - 39.35.680.

History - (Sec. 52 ch 47 SLA 2007)

Effective Date Notes - Section 77, ch. 47, SLA 2007, makes this section effective July 10, 2007, in accordance with AS 01.10.070(c).

### **SEC. 39.35.675. INCLUSION OF COST-OF-LIVING DIFFERENTIALS IN COMPENSATION AND BENEFITS.**

(a) An employee shall make contributions to the plan based on compensation including a cost-of-living differential.

(b) The amount of a cost-of-living differential may not be included in the employee's compensation for purposes of calculating benefits paid under AS 39.35.095 - 39.35.680 unless the employee has received a cost-of-living differential for at least 50 percent of the employee's credited service.

(c) When an employee receives a benefit, and if the employee's compensation for purposes of calculating the benefit does not include a cost-of-living differential, then the administrator shall refund to the employee the amount of contributions the employee made based on the differential.

(d) In this section "cost-of-living differential" means an adjustment to salary based on the cost of living in the geographic region where the employee works and includes a pay step differential under AS 39.27.020.

History - (Sec. 46 ch 82 SLA 1986; am Sec. 11 ch 57 SLA 2001)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, "AS 39.35.095 - 39.35.680" was substituted for "this chapter" and "plan" was substituted for "system" in this section.

Amendment Notes - The 2001 amendment, effective July 1, 2001, deleted "in a comparable amount or of at least that many steps" following "differential" in subsection (b).

Editors Notes - Section 58, ch. 82, SLA 1986, provides that this section applies "only to members first hired under the Public Employees' Retirement System after December 31, 1986."

**SEC. 39.35.677. SPECIAL RULES FOR TREATMENT OF QUALIFIED MILITARY SERVICE.**

Notwithstanding any contrary provisions of AS 39.35.095 - 39.35.680, with respect to qualified military service, contributions shall be made and benefits and service credit shall be provided in accordance with 26 U.S.C. 414(u).

History - (Sec. 43 ch 59 SLA 2002)

Revisors Notes - Under sec. 144, ch. 9, FSSLA 2005, "AS 39.35.095 - 39.35.680" was substituted for "this chapter" in this section.

**SEC. 39.35.678. INTERNAL REVENUE CODE COMPLIANCE.**

(a) The administrator shall use forfeitures that arise for any reason, including from termination of employment or death, to reduce employer contributions. Forfeitures may not be applied to increase the benefits of any member.

(b) The administrator shall determine the amount of any benefit that is determined on the basis of actuarial tables using assumptions approved by the commissioner. The amount of benefits is not subject to employer discretion.

(c) Employee contributions paid to, and retirement benefits paid from, the plan may not exceed the annual limits on contributions and benefits, respectively, allowed by 26 U.S.C. 415. Notwithstanding any contrary provision of law, the administrator may modify a request by a member to make a contribution to a plan if the amount of the contribution would exceed the limits provided in 26 U.S.C. 415 by using the following methods:

(1) if the law requires a lump sum payment for the purchase of service credit, the administrator may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under 26 U.S.C. 415(c) or (n);

(2) if a periodic payment plan under (1) of this subsection will not avoid a contribution in excess of the limits imposed by 26 U.S.C. 415(c), the administrator may either reduce the member's contribution to an amount within the limits of that section or refuse the member's contribution.

History - (Sec. 76 ch 20 SLA 2007)

Effective Date Notes - Section 120, ch. 20, SLA 2007, makes this section effective June 7, 2007, in accordance with AS 01.10.070(c).

**SEC. 39.35.680. DEFINITIONS.**

In AS 39.35.095 - 39.35.680, unless the context otherwise requires,

(1) “active member” means an employee who is employed by an employer, is receiving compensation for seasonal, permanent full-time, or permanent part-time services, and is making contributions to the plan;

(2) “actuarial adjustment” means the adjustment necessary to obtain equality in value of the aggregate expected payments under two different forms of pension payments, considering expected mortality and interest earnings on the basis of assumptions, factors, and methods specified in regulations issued under this plan that are formally adopted by the board that clearly preclude employer discretion in the determination of the amount of any member’s benefit;

(3) “administrator” means the commissioner of administration or the commissioner’s designee appointed under AS 39.35.003;

(4) “average monthly compensation” means the result obtained by dividing the compensation earned by an employee during a considered period by the number of months, including fractional months, for which compensation was earned; an employee must have at least 115 days of credited service in the last payroll year in order for that year to be used as part of the consecutive payroll years; the considered period consists of

(A) for employees first hired before July 1, 1996, the three consecutive payroll years during the period of credited service that yield the highest average;

(B) for employees first hired on or after July 1, 1996, the five consecutive payroll years during the period of credited service that yield the highest average;

(C) if the employee does not have the number of consecutive payroll years required by (A) or (B) of this paragraph, the actual number of months, including fractional months, that the employee worked;

(D) for an employee who has made an election under AS 39.35.300(c) or 39.35.310(c), the actual number of months, including fractional months, that the employee worked;

(E) for a peace officer or fire fighter hired at any time, the three consecutive payroll years during the period of credited service that yield the highest average;

(5) “beneficiary” means a person designated by an employee to receive benefits that may be due from the plan upon the employee’s death;

(6) “board” means the Alaska Retirement Management Board;

(7) “calendar year” means the period beginning on January 1 and ending on December 31;

(8) “commissioner” means the commissioner of administration;

(9) “compensation” means the remuneration earned by an employee for personal services rendered to an employer, including employee contributions under AS 39.35.160, cost-of-living differentials only as provided in AS 39.35.675, payments for leave that is actually used by the employee, the amount by which the employee’s wages are reduced under AS 39.30.150(c), an amount that is contributed by the employer under a salary reduction agreement and that is not includable in the gross income of the employee under 26 U.S.C. 125 or 132(f)(4), and any amount deferred under an employer-sponsored deferred compensation plan, but does not include retirement benefits, severance pay or other separation bonuses, welfare benefits, per diem, expense allowances, workers’ compensation payments, or payments for leave not used by the employee whether those leave payments are scheduled payments, lump-sum payments, donations, or cash-ins; for a member first hired on or after July 1, 1996, compensation does not include remuneration in excess of the limitations set out in 26 U.S.C. 401(a)(17) (Internal Revenue Code);

(10) “credited service” means the number of years, including fractional years, recognized for computing benefits that may be due from the plan;

(11) “deferred vested member” means an inactive member who meets the five-year credited service requirement to qualify for a retirement benefit;

(12) “dependent child” means an unmarried child of an employee, including one adopted, who is dependent upon the employee for support and who is either (A) under 19 years old or (B) under 23 years old and registered at and attending on a full-time basis an accredited educational or technical institution recognized by the Department of Education and Early Development; age restrictions set out in this paragraph do not apply to a child who is totally and permanently disabled;

(13) “disabled member” means an employee who is terminated, who has not received a refund from the plan and is receiving a disability benefit from the plan;

(14) “early retirement” means retirement for a member who is not eligible for normal retirement and who is at least 55 years old and is eligible to receive benefits under AS 39.35.370(b) or under AS 39.35.385(b) or (f);

(15) “elected official” means a person whose compensation results from personal services rendered to an employer as an elected representative;

(16) “employee contribution account” means the total maintained by the plan of the employee’s mandatory contributions, voluntary contributions, indebtedness principal, and interest contributions, interest credited to each of those accounts, and adjustments to the accounts in accordance with AS 39.35.100;

(17) “employee savings account” means the account maintained by the plan to record the voluntary contributions of each employee, including interest and adjustments to the account in accordance with AS 39.35.100;

(18) “employer” means

(A) the State of Alaska;

(B) a political subdivision or public organization of the state that participates in the plan based on a resolution to participate in the plan that was approved by the administrator on or before July 1, 2006; or

(C) a political subdivision or public organization of the state that, as a result of consolidation or reorganization that occurs on or after July 1, 2006, assumes liability under the plan of a political subdivision or public organization described in (B) of this paragraph;

(19) “fiscal year” means the period beginning on July 1 and ending on June 30 of the following calendar year;

(20) “former member” means an employee who is terminated and who has received a total refund of the balance of the employee contribution account or who has requested in writing a refund of the balance in the employee contribution account;

(21) “inactive member” means an employee who is terminated and who has not received a refund from the plan or an employee on leave-without-pay status or layoff status;

(22) “member” or “employee”

(A) means a person eligible to participate in the plan and who is covered by the plan;

(B) includes

(i) an active member;

(ii) an inactive member;

- (iii) a vested member;
- (iv) a deferred vested member;
- (v) a nonvested member;
- (vi) a disabled member;
- (vii) a retired member;
- (viii) an elected public officer under AS 39.35.381;

(C) does not include

- (i) former members;
- (ii) persons compensated on a contractual or fee basis;
- (iii) casual or emergency workers or nonpermanent employees as defined in AS 39.25.200;
- (iv) persons covered by the Alaska Teachers' Retirement System except as provided under AS 39.35.131 and 39.35.381, or persons covered by a university retirement program;
- (v) employees of the division of marine transportation engaged in operating the state ferry system who are covered by a union or group retirement system to which the state makes contributions;
- (vi) justices of the supreme court or judges of the court of appeals or of the superior or district courts of Alaska;
- (vii) the administrative director of courts appointed under art. IV, sec. 16 of the state constitution unless the director becomes a member under AS 39.35.158;
- (viii) members of the elected public officers' retirement system (former AS 39.37); and
- (ix) contractual employees of the legislative branch of state government under AS 24.10.060(f);

(D) may include employees of the division of marine transportation excluded under (C)(v) of this paragraph provided that

- (i) the State of Alaska formally agrees to their inclusion through the process of collective bargaining; and

(ii) no collective bargaining agreement has the effect of obligating contributions made by the state under AS 39.30.150 in the event the state resumes participation in the federal social security system;

(23) “military service” means active duty service in the armed forces of the United States;

(24) “nonoccupational disability” means a physical or mental condition that, in the judgment of the administrator, presumably permanently prevents an employee from satisfactorily performing the employee’s usual duties for an employer or the duties of another position or job that an employer makes available and for which the employee is qualified by training or education, not including a condition resulting from a cause that the board, in its regulations has excluded;

(25) “non-vested member” means an active or inactive member who does not meet the five-year credited service requirement to qualify for a retirement benefit;

(26) “normal retirement” means retirement for a member who is eligible to receive benefits under AS 39.35.370(a) or under 39.35.385(a) or (f);

(27) “occupational disability” means a physical or mental condition that, in the judgment of the administrator, presumably permanently prevents an employee from satisfactorily performing the employee’s usual duties for an employer or the duties of another comparable position or job that an employer makes available and for which the employee is qualified by training or education; however, the proximate cause of the condition must be a bodily injury sustained, or a hazard undergone, while in the performance and within the scope of the employee’s duties and not the proximate result of the wilful negligence of the employee;

(28) “past service liability” means the actuarially determined excess of the accrued liability of the plan over the value of the plan’s assets, as of the date of the last actuarial valuation;

(29) “payroll year” means the period that includes the first pay period ending in January of a year through the last pay period ending in December of that year;

(30) “peace officer” or “fire fighter” means an employee occupying a position as a peace officer, chief of police, regional public safety officer, correctional officer, correctional superintendent, fire fighter, fire chief, or probation officer, but does not include a village public safety officer employed by a village public safety officer program established under AS 18.65.670;

(31) “pension fund” or “fund” means the fund in which the assets of the plan, including income and interest derived from the investment of money, are deposited and held;

(32) “permanent full-time” means an employee who is occupying a permanent position that regularly requires working 30 or more hours a week;

(33) “permanent part-time” means an employee who is occupying a permanent position that regularly requires working at least 15 hours but less than 30 hours a week;

(34) “plan” means the retirement plan established in AS 39.35.095 - 39.35.680;

(35) “prescribed rate of interest” means the rate of interest used for computing employer contributions, for preparing actuarial tables used by the plan and for crediting interest to employee contributions and savings accounts, and for charging interest on employee indebtedness accounts;

(36) “public organization” means an organization or entity

(A) created by the constitution or laws of the state for the purpose of administering state programs;

(B) whose officers and employees are paid by a method other than by the state payroll prepared by the Department of Administration; and

(C) whose employees are not required by law to participate in the plan;

(37) “qualified domestic relations order” means a divorce or dissolution judgment under AS 25.24, including an order approving a property settlement, that

(A) creates or recognizes the existence of an alternate payee’s right to, or assigns to an alternate payee the right to, receive all or a portion of employee contribution account or the benefits payable with respect to an employee;

(B) sets out the name and last known mailing address, if any, of the employee and of each alternate payee covered by the order;

(C) sets out the amount or percentage of the employee’s benefit, or of any survivor’s benefit, to be paid to the alternate payee, or sets out the manner in which that amount or percentage is to be determined;

(D) sets out the number of payments or period to which the order applies;

(E) sets out the retirement plan to which the order applies;

(F) does not require any type or form of benefit or any option not otherwise provided by AS 39.35.095 - 39.35.680;

(G) does not require an increase of benefits in excess of the amount provided by AS 39.35.095 - 39.35.680, determined on the basis of actuarial value; and

(H) does not require the payment to an alternate payee of benefits that are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order;

(38) “retired member” means an employee who is terminated, who has not received a refund from the plan and is receiving a benefit other than disability, from the plan;

(39) “retirement” means that period of time from the first day of the month following (A) the date of termination and (B) application for retirement, in which a person is appointed to receive a retirement benefit, other than occupational or nonoccupational disability benefit;

(40) “seasonal” refers to an employee who is occupying a position for less than 12 months each year where it is anticipated that the same employee will return to the position when needed and includes a temporary employee of the legislature if part of the service for the legislature during each calendar year is performed during a legislative session;

(41) “surviving spouse” means the spouse of an employee who has been married to the employee for at least one year at the time of the employee’s death; the one-year marriage requirement does not apply when the employee’s death was an occupational or accidental death;

(42) “system” means the Public Employees’ Retirement System of Alaska;

(43) “vested member” is an active member who meets the five-year credited service requirement to qualify for a retirement benefit.

History - (Sec. 3 ch 143 SLA 1960; am Sec. 2 ch 93 SLA 1962; am Sec. 3 ch 102 SLA 1963; am Sec. 10 ch 155 SLA 1966; am Sec. 14 ch 83 SLA 1967; am Sec. 18 - 21 ch 109 SLA 1970; am Sec. 16 ch 159 SLA 1972; am Sec. 36 ch 1 SLA 1974; am Sec. 110 ch 127 SLA 1974; am Sec. 3 ch 200 SLA 1975; am Sec. 9, 10, 15 ch 205 SLA 1975; am Sec. 5, 6 ch 27 SLA 1976; am Sec. 22, 23 ch 123 SLA 1976; am Sec. 1 ch 141 SLA 1976; am Sec. 7 ch 218 SLA 1976; am Sec. 6, 7 ch 245 SLA 1976; am Sec. 12, 13 ch 263 SLA 1976; am Sec. 54 ch 128 SLA 1977; am Sec. 3 ch 58 SLA 1979; am

Sec. 3 ch 67 SLA 1979; am Sec. 14 ch 82 SLA 1979; am Sec. 27 ch 12 SLA 1980; am Sec. 47, 48 ch 13 SLA 1980; am Sec. 36, 37 ch 146 SLA 1980; am Sec. 68 - 73 ch 137 SLA 1982; am Sec. 2, 3 ch 27 SLA 1983; am Sec. 47 - 53 ch 82 SLA 1986; am Sec. 50 ch 117 SLA 1986; am Sec. 33 ch 106 SLA 1988; am Sec. 4 ch 58 SLA 1989; am Sec. 2 ch 60 SLA 1989; am Sec. 6 ch 104 SLA 1989; am Sec. 1 ch 47 SLA 1990; am Sec. 17 ch 6 SLA 1993; am Sec. 18 ch 4 FSSLA 1996; am Sec. 4 ch 22 SLA 1998; am Sec. 52 - 55 ch 68 SLA 2000; am Sec. 11, 12 ch 97 SLA 2001; am Sec. 44 - 46 ch 59 SLA 2002; am Sec. 28, 29 ch 92 SLA 2004; am Sec. 117 - 121 ch 9 2005 FSSLA; am Sec. 32 ch 12 SLA 2006; am Sec. 77 - 79 ch 20 SLA 2007; am Sec. 21 ch 13 SLA 2008)

Revisors Notes - Reorganized in 1986, 2005, and 2008 to alphabetize the defined terms.

Minor word changes were made in 1989 to reconcile amendments to (22)(C) (iv) [formerly (21)(C)(iv)] of this section by chapters 58 and 104 SLA 1989.

In 1999, in this section, “Department of Education” was changed to “Department of Education and Early Development” in accordance with Sec. 89, ch. 58, SLA 1999.

In the 2000 amendment of paragraph (4), the revisor of statutes deleted the word “and” set out at the end of subparagraph (4)(A) to correct a manifest error.

Under sec. 144, ch. 9, FSSLA 2005, “AS 39.35.095 - 39.35.680” was substituted for “this chapter” and “plan” was substituted for “system” in various paragraphs of this section.

Cross References - For transition provisions relating to the 1983 amendment deleting “qualified employee of the Department of Fish and Game” from the definition of “peace officer”, see Sec. 4 and 5, ch. 27, SLA 1983, in the Temporary and Special Acts; for applicability of paragraph (40) of this section to certain persons not employed under the public employee’s retirement system on July 1, 1979, see Sec. 15, ch. 82, SLA 1979 in the Temporary and Special Acts and Resolves; for conversion of credited service by persons employed as probation officers before May 15, 1990, see Sec. 2, ch. 47, SLA 1990 in the Temporary and Special Acts; for legislative intent concerning the 1998 amendment of paragraph (21) [now (22)], see Sec. 1, ch. 22, SLA 1998 in the 1998 Temporary and Special Acts.

Amendment Notes - The 2001 amendment, effective March 1, 2002, in paragraph (17) [now (18)], added subparagraph (B) and the subparagraph designations; and, effective October 8, 2001, in paragraph (28) [now (30)], inserted “regional public safety officer,” and added the language beginning “but does not include” to the end.

The 2002 amendment, effective June 20, 2002, in paragraph (2) inserted “the adjustment necessary to obtain” and substituted “referred to in the information handbook published under AS 39.35.060(8)” for “adopted from time to time by the board”; in paragraph (4) added subparagraph (E); and in paragraph (34) [now (37)] added present subparagraph (E) and redesignated former subparagraphs (E)-(G) as subparagraphs (F)-(H).

The 2004 amendment, effective June 26, 2004, rewrote paragraph (2), and deleted paragraph (17)(B) [now (18)(B)], relating to village public safety officers, making related changes.

The 2005 amendment, effective July 28, 2005, in paragraph (2) substituted “plan” for “system” and deleted “under AS 39.35.042” following “formally adopted”; in paragraph (6) substituted “Alaska Retirement Management Board” for “Public Employees’ Retirement Board”; deleted “the optional” preceding “university retirement” in item (21)(C)(iv) [now (22)(C)(iv)]; in paragraph (34) [now (37)] substituted “retirement plan” for “system” in subparagraph (E) and “AS 39.35.095 - 39.35.680” for “this chapter” in subparagraphs (F) and (G); and added paragraphs (41) and (42) [now (8) and (34)].

The 2006 amendment, effective April 4, 2006, deleted “or who is eligible for a refund under AS 39.35.200(b)” at the end of paragraph (20), and made a related stylistic change.

The 2007 amendment, effective June 7, 2007, substituted “or the commissioner’s designee appointed under AS 38.35.003” for “under AS 39.35.050” in paragraph (3), inserted “an amount that is contributed by the employer under a salary reduction agreement and that is not includable in the gross income of the employee under 26 U.S.C. 125 or 132(f)(4)” in paragraph (9), added “based on a resolution to participate in the plan that was approved by the administrator on or before July 1, 2006” in paragraph (18)(B), added paragraph (18)(C), and made related changes.

The 2008 amendment, effective July 1, 2008, added paragraph (43) [now (28)].

Editors Notes - Section 4, ch. 58, SLA 1979, purported to add a paragraph to this section, effective if approved in a special election conducted by the Department of Administration among the active members of the public employees’ retirement system. The amendment was rejected.

Section 57, ch. 82, SLA 1986 provides: “Sections 16, 22-23, 25-27, 42-45, and 50 of this Act apply only to members first hired under the Public Employees’ Retirement System after June 30, 1986.”

Section 58, ch. 82, SLA 1986, provides that the definition of “compensation” as repealed and reenacted by sec. 49, ch. 82, SLA 1986 applies “only to members first hired under the Public Employees’ Retirement System after December 31, 1986.”

Chapter 205, SLA 1975, which amended this section, was submitted to the voters by referendum and was rejected.

Section 44, ch. 4, FSSLA 1996 provides that nothing in that Act, which amended the definition of “average monthly compensation,” modifies or terminates the terms of a collective bargaining agreement in effect on July 1, 1996.” Under Sec. 45, ch. 4, FSSLA 1996, the provisions of that Act, which amended the definition of “average monthly compensation,” are not severable, notwithstanding AS 01.10.030.

In general, a person’s right to benefits under the state’s public employee retirement systems vests when the person joins the system. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981). Therefore, former law may govern the benefits of some members of the public employees’ retirement system. The user is advised to ascertain which version of the statute is applicable. Earlier versions of the statutes can be found in prior editions of the Alaska Statutes or in the published Session Laws of Alaska.

Section 13, ch. 97, SLA 2001 provides that the amendments to this section made by ch. 97, SLA 2001 do “not modify the terms of a contract between the state and a nonprofit regional corporation in existence on the effective date of this Act.” The effective date of Sec. 7, ch. 97, SLA 2001, which amended this section, was March 1, 2002.

Decisions - The thrust of the exemptions in this chapter, the State Personnel Act, AS 39.25.110, and the statutory leave provisions for state employees, AS 39.20.310, is to provide for those public employees who are not susceptible to ordinary recruiting and examining procedures. *Hafling v. Inlandboatmen’s Union*, 585 P.2d 870 (Alaska 1978).

“Employees” construed. - A former employee who had withdrawn his Public Employees’ Retirement System (PERS) contributions is not eligible for occupational disability benefits. Only “employees” are eligible for occupational disability benefits under PERS. “Former members” of PERS are not considered “employees.” “Former member” includes any employee who has received a total refund of the balance of the employee contribution account, or who has requested in writing a refund of the balance in the employee contribution account. *Waller v. Stalnaker*, 915 P.2d 637 (Alaska 1996).

“Actuarial equivalent” not an adjustment. - Public Employees’ Retirement System Board’s recalculation of member benefits under earlier requirement of AS 39.35.150 to reduce subsequent retirement benefits by the “actuarial equivalent” of retirement benefits previously received was not an “adjustment” triggering application of earlier requirements of AS 39.35.520(b), which prohibits downward adjustments under certain circumstances. *Alford v. State*, 195 P.3d 118 (Alaska 2008).

Cashed-in leave as “compensation”. - Before the Alaska Legislature amended former AS 39.35.680(4) in 1977, by 1977 SLA ch. 128, Sec. 54 (which did specifically exclude cashed-in leave while said statute was silent on the subject), neither by law nor by practice did a former state employee, hired in 1969, acquire a right to have his cashed-in leave included as part of his compensation, and he therefore had no right that could have been impaired when the legislature excluded cashed-in leave from the definition of compensation; accordingly, the Alaska Public Employees’ Retirement Board’s refusal to allow the former state employee to include his cashed-in leave when calculating his retirement benefits did not violate Alaska Const. art. XII, Sec. 7. *McMullen v. Bell*, 128 P.3d 186 (Alaska 2006).

“Occupational disability.” - The Public Employees’ Retirement Board applied the correct legal standard in considering whether an occupational injury had been a “substantial factor” in the employee’s disability, and there was substantial evidence to support the Board’s conclusion that the employee’s disability was caused by a degenerative hip condition unrelated to her work. *Lopez v. Administrator, Pub. Employees’ Retirement Sys.*, 20 P.3d 568 (Alaska 2001).

Presumably permanent disability. - An employee who is seeking occupational or nonoccupational disability benefits must prove that her condition is more likely than not permanent and, if she meets that burden, her condition is presumably permanent and she is entitled to disability benefits. *Stalnak v. Williams*, 960 P.2d 590 (Alaska 1998).

In determining an employees’ entitlement to occupational-disability benefits, the Public Employees’ Retirement Board erred by looking for evidence of a permanent, rather than presumably permanent, disability. *Stalnak v. Williams*, 960 P.2d 590 (Alaska 1998).

Termination of benefits under “75% rule” where employment found outside PERS. - Under the definition of “occupational disability” in this section, a state employee was eligible for benefits if he could not perform his old job or a comparable job made available by a Public Employees’ Retirement System (PERS) employer, but found a well-paying job outside PERS; the “75% rule”, by which a comparable position was determined as one which provided a compensation of 75% or more of the salary used to calculate the member’s PERS occupational disability benefit, which appeared in the version of a regulation (2 AAC 35.291(a)) in effect at the time of employee’s termination, was contrary to the statutory definition of “employer”. *State v. Morton*, 123 P.3d 986 (Alaska 2005).

“Qualified domestic relations order.” - Court had authority to approve a post-dissolution qualified domestic relations order where parties agreed when they dissolved their marriage, eight years earlier to divide husband’s retirement benefits, and wife should have been awarded survivor benefits, as an integral part of what the parties agreed to divide. *Zito v. Zito*, 969 P.2d 1144 (Alaska 1998).

Where an original marriage dissolution order includes an agreement to divide the marital interest in retirement benefits, issuance of a post-dissolution qualified domestic relations order neither adds to nor modifies the original judgment; a QDRO simply enforces a court order calling for division of retirement benefits. *Zito v. Zito*, 969 P.2d 1144 (Alaska 1998).

Retirement benefits encompasses survivor benefits. - Barring an express understanding to the contrary, an agreement for equitable division of retirement benefits earned during a marriage presumptively encompasses survivor benefits. *Zito v. Zito*, 969 P.2d 1144 (Alaska 1998).

Applied in *Hester v. State, Pub. Employees' Retirement Bd.*, 817 P.2d 472 (Alaska 1991).

Quoted in *State, Pub. Employees Retirement Bd. v. Cacioppo*, 813 P.2d 679 (Alaska 1991); *Rhines v. State*, 30 P.3d 621 (Alaska 2001).

Cited in *Laing v. Laing*, 741 P.2d 649 (Alaska 1987); *Stalnaker v. M.L.D.*, 939 P.2d 407 (Alaska 1997).

## **SEC. 39.35.690. [RENUMBERED AS AS 39.35.995].**

Repealed or Renumbered

# **ARTICLE 10. EMPLOYEES FIRST HIRED ON OR AFTER JULY 1, 2006**

## **SEC. 39.35.700. APPLICABILITY OF AS 39.35.700 - 39.35.990.**

The provisions of AS 39.35.700 - 39.35.990 apply only to members first hired on or after July 1, 2006, to members who are employed by employers that do not participate in the defined benefit retirement plan established under AS 39.35.095 - 39.35.680, or to members who transfer into the defined contribution retirement plan under AS 39.35.940.

History - (Sec. 122 ch 9 FSSLA 2005; am Sec. 80 ch 20 SLA 2007)

Delayed Amendment -. of section. - Under Sec. 81 and 119, ch. 20, SLA 2007, effective July 1, 2010, this section will read as follows: “”Applicability of AS 39.35.700 - 39.35.990. The provisions of AS 39.35.700 - 39.35.990 apply only to members first hired on or after July 1, 2006, to members who are employed by employers that do not participate in the defined benefit retirement plan established under AS 39.35.095 - 39.35.680, to former members as defined in AS 39.35.680, or to members who transfer into the defined contribution retirement plan under AS 39.35.940.”

Amendment Notes - The 2007 amendment, effective June 7, 2007, inserted “to members who are employed by employers that do not participate in the defined benefit retirement plan established under AS 39.35.095 - 39.35.680” and “retirement.”

Article Notes - Effective Dates. AS 39.35.700 - 39.35.990 take effect July 1, 2006 under secs. 122 and 148, ch. 9, FSSLA 2005.

Legislative History Reports. For governor’s transmittal letter for ch. 20, SLA 2007 (SB 123), proposing needed corrections and clarifications of statutes enacted as part of the 2005 legislation establishing defined contributions retirement plans and making related amendments to defined benefit retirement plans, see 2007 Senate Journal 567 - 570.

**SEC. 39.35.710. DEFINED CONTRIBUTION RETIREMENT  
PLAN ESTABLISHED; FEDERAL QUALIFICATION  
REQUIREMENTS.**

(a) A defined contribution retirement plan is established for employees of the state or a political subdivision or public organization of the state.

(b) The defined contribution retirement plan is a plan in which savings are accumulated in an individual retirement account for the exclusive benefit of the member or beneficiaries. The plan is established effective July 1, 2006, at which time contributions by employers and members begin.

(c) The retirement plan established by AS 39.35.700 - 39.35.990 is intended to qualify under 26 U.S.C. 401(a), 414(d), and 414(k) (Internal Revenue Code) as a qualified retirement plan established and maintained by the state for its employees, for the employees of political subdivisions, public corporations, and public organizations of the state, and for the employees of other employers whose participation is authorized by AS 39.35.700 - 39.35.990 and who participate in the plan set out in AS 39.35.700 - 39.35.990. Benefits under AS 39.35.880 are not provided by the defined contribution retirement plan.

(d) An amendment to AS 39.35.700 - 39.35.990 does not provide a person with a vested right to a benefit if the Internal Revenue Service determines that the amendment will result in disqualification of the plan under the Internal Revenue Code.

History - (Sec. 122 ch 9 FSSLA 2005; am Sec. 82 ch 20 SLA 2007)

Amendment Notes - The 2007 amendment, effective June 7, 2007, substituted “414(d), and 414(k)” for “and 414(d)” in the first sentence of subsection (c), and added the last sentence of that subsection.

## **SEC. 39.35.720. MEMBERSHIP.**

An employee who becomes a member on or after July 1, 2006, shall participate in the plan set out in AS 39.35.700 - 39.35.990.

History - (Sec. 122 ch 9 FSSLA 2005)

## **SEC. 39.35.725. PARTICIPATION OF ELECTED OFFICIALS OF POLITICAL SUBDIVISIONS.**

(a) An elected official of a political subdivision of the state that participates in both the plan and the defined benefit plan of AS 39.35.095 - 39.35.680 is a member of the plan if

(1) the political subdivision covers elected officials under AS 39.35.600 - 39.35.650 and has designated elected officials under AS 39.35.957 as a classification of employees entitled to participate in the plan; and

(2) the elected official receives compensation from the political subdivision for services as an elected official in the amount of at least \$2,001 a month.

(b) An elected official of a political subdivision of the state that participates in the plan but not the defined benefit plan of AS 39.35.095 - 39.35.680 is a member of the plan if

(1) the political subdivision has designated elected officials under AS 39.35.957 as a classification of employees entitled to participate in the plan; and

(2) the elected official receives compensation from the political subdivision for services as an elected official in the amount of at least \$2,001 a month.

(c) An elected official entitled to participate under this section, and who either has no previous service under the system with the political subdivision or is retired under the system, may file a waiver of participation in the plan with the administrator within 30 days after the later of June 7, 2007 or the date that the elected official's term of office begins. A waiver is irrevocable for the remainder of the elected official's service as an elected official or employee of the political subdivision.

History - (Sec. 83 ch 20 SLA 2007; am Sec. 22 ch 13 SLA 2008)

Amendment Notes - The 2008 amendment, effective July 1, 2008, substituted "AS 39.35.600 - 39.35.650" for "AS 39.35.550 - AS 39.35.650" in paragraph (a)(1).

Effective Date Notes - Section 120, ch. 20, SLA 2007, makes this section effective June 7, 2007, in accordance with AS 01.10.070(c).

**SEC. 39.35.730. CONTRIBUTIONS BY MEMBERS.**

(a) Each member shall contribute to the member's individual account an amount equal to eight percent of the member's compensation from July 1 to the following June 30.

(b) [Repealed, Sec. 116(a) ch 20 SLA 2007].

(c) The employer shall deduct the contribution from the member's compensation at the end of each payroll period, and the contribution shall be credited by the plan to the member's individual account. The contributions shall be deducted from the member's compensation before the computation of applicable federal taxes and shall be treated as employer contributions under 26 U.S.C. 414(h)(2). A member may not have the option of making the payroll deduction directly in cash instead of having the contribution picked up by the employer.

History - (Sec. 122 ch 9 FSSLA 2005; am Sec. 116(a) ch 20 SLA 2007)

Amendment Notes - The 2007 amendment, effective June 7, 2007, repealed subsection (b).

**SEC. 39.35.740. EMPLOYMENT CONTRIBUTIONS MANDATORY.**

Contributions of employees shall be made by payroll deductions. Every included employee shall be considered to consent to payroll deductions. It is of no consequence that a payroll deduction may cause the compensation paid in cash to an employee to be reduced below the minimum required by law. Payment of an employee's compensation, less payroll deductions, is a full and complete discharge and satisfaction of all claims and demands by the employee relating to remuneration of services during the period covered by the payment, except with respect to the benefits provided under the plan.

History - (Sec. 122 ch 9 FSSLA 2005)

**SEC. 39.35.750. CONTRIBUTIONS BY EMPLOYERS.**

(a) An employer shall contribute to each member's individual account an amount equal to five percent of the member's compensation from July 1 to the following June 30.

(b) An employer shall also contribute an amount equal to a percentage, as adopted by the board, of each member's compensation from July 1 to the following June 30 to pay for retiree major medical insurance. This contribution shall be paid into the Alaska retiree health care trust established by the commissioner of administration under AS 39.30.097(b) and shall be accounted for in accordance with regulations established by the commissioner.

(c) Notwithstanding (b) of this section, the employer contribution for retiree major medical insurance for fiscal year 2007 shall be 1.75 percent of each member's compensation from July 1 to the following June 30.

(d) An employer shall also make contributions to the health reimbursement arrangement plan under AS 39.30.370.

(e) An employer shall make annual contributions to a trust account in the plan, applied as a percentage of each member's compensation from July 1 to the following June 30, in an amount determined by the board to be actuarially required to fully fund the cost of providing occupational disability and occupational death benefits under AS 39.35.700 - 39.35.990 and retirement benefits elected by disabled peace officers and fire fighters under AS 39.35.890(h)(2). The contribution required under this subsection for peace officers and fire fighters and the contribution required under this subsection for other employees shall be separately calculated based on the actuarially calculated costs for each group of employees.

History - (Sec. 122 ch 9 FSSLA 2005; am Sec. 84, 85 ch 20 SLA 2007; am Sec. 23 ch 13 SLA 2008)

Amendment Notes - The 2007 amendment, effective June 7, 2007, substituted "adopted" for "certified" in the first sentence of subsection (b), substituted "Alaska retiree health care trust" for "group health and life benefits fund" and "AS 39.30.097(b)" for "AS 39.30.095" in the second sentence of subsection (b), and substituted "a trust account in the plan, applied as a percentage of each member's compensation from July 1 to the following June 30" for "the plan" and "AS 39.35.700 - 39.35.990 and retirement benefits elected by disabled peace officers and fire fighters under AS 39.35.890(h)(2)" for "AS 39.35.890 and 39.35.892" in the first sentence of subsection (e).

The 2008 amendment, effective July 1, 2008, substituted "AS 39.30.370" for "AS 39.30.300" in subsection (d).

Editors Notes - Section 134, ch. 9, FSSLA 2005 provides that, notwithstanding (e) of this section, "for the first fiscal year in which the public employees' defined contribution retirement plan is in effect, the employer contribution to fully fund the cost of providing occupational disability and occupational death benefits under AS 39.35.890 and 39.35.892 shall be equal to

"(1) 0.4 percent of the compensation for peace officers and fire fighters; and

"(2) 0.3 percent of the compensation for all other employees."

Under Sec. 148, ch. 9, FSSLA 2005, section 134, ch. 9, FSSLA 2005 takes effect July 1, 2006.

**SEC. 39.35.760. ROLLOVER CONTRIBUTIONS AND DISTRIBUTIONS.**

(a) An employee entering the plan may elect, at the time and in the manner prescribed by the administrator, to have all or part of a direct rollover distribution from an eligible retirement plan owned by the member paid directly into the member's individual account.

(b) Rollover contributions do not count as a purchase of membership service for the purpose of determining years of service.

(c) A distributee may elect, at the time and in the manner prescribed by the administrator, to have all or part of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in the direct rollover.

(d) In this section,

(1) "direct rollover" means the payment of an eligible rollover distribution by the plan to an eligible retirement plan specified by a distributee who is eligible to elect a direct rollover;

(2) "distributee" means a member, or a beneficiary who is the surviving spouse of the member, or an alternate payee;

(3) "eligible retirement plan" means

(A) an individual retirement account described in 26 U.S.C. 408(d)(3)(A);

(B) an annuity plan described in 26 U.S.C. 403(a);

(C) a qualified trust described in 26 U.S.C. 401(a);

(D) an annuity plan described in 26 U.S.C. 403(b);

(E) a governmental plan described in 26 U.S.C. 457(b);

(F) an individual retirement annuity defined in 26 U.S.C. 408(b); or

(G) on or after January 1, 2008, a Roth IRA described in 26 U.S.C. 408A;

(4) "eligible rollover distribution" means a distribution of all or part of a total account to a distributee, except for

(A) a distribution that is one of a series of substantially equal installments payable not less frequently than annually over the life expectancy of the distributee or the joint and last survivor life expectancy of the distributee and the distributee's designated beneficiary, as defined in 26 U.S.C. 401(a)(9);

(B) a distribution that is one of a series of substantially equal installments payable not less frequently than annually over a specified period of 10 years or more;

(C) a distribution that is required under 26 U.S.C. 401(a)(9);

(D) the portion of any distribution that is not includable in gross income; however, a portion under this subparagraph may be transferred only to an individual retirement account or annuity described in 26 U.S.C. 408(a) or (b), to a qualified plan described in 26 U.S.C. 401(a) or 403(a), or to an annuity contract described in 26 U.S.C. 403(b), that agrees to separately account for amounts transferred, including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not includable in gross income; and

(E) other distributions that are reasonably expected to total less than \$200 during a year.

History - Sec. 122 ch 9 FSSLA 2005; am Sec. 86, 87 ch 20 SLA 2007)

Amendment Notes - The 2007 amendment, effective June 7, 2007, substituted “an individual” for “a conduit individual” in paragraph (d)(3)(A), added paragraphs (d)(3)(F) and (d)(3)(G), added the proviso at the end of paragraph (d)(4)(D), deleted former paragraph (d)(4)(E), which provided “a distribution that is on account of hardship” and made related and stylistic changes.

## **SEC. 39.35.770. TRANSMITTAL OF CONTRIBUTIONS; CLAIMS AGAINST FUNDS OF AN EMPLOYER.**

(a) All contributions deducted in accordance with AS 39.35.700 - 39.35.990 shall be transmitted to the plan for deposit in the appropriate account or trusts as soon as administratively feasible, but in no event later than 15 days following the close of the payroll period.

(b) If contributions are not transmitted within the prescribed time limit, interest shall be assessed on the outstanding contributions at the rate established under AS 39.35.610 from the date that contributions were originally due. Amounts due from an employer and interest as prescribed in this subsection may be claimed by the administrator from any agency of the state or political subdivision that has in its possession funds of the employer or that is authorized to disburse funds to the employer that are not restricted by statute or appropriation to a specific purpose. The amount claimed shall be certified by the administrator as sufficient to pay the contributions and interest due from the employer. The amount claimed shall be submitted to the administrator for deposit in the appropriate account or trusts.

(c) Employers are responsible for administrative fees, investment fees, and investment losses charged to accounts established under AS 39.35.730 resulting from contribution adjustments due to employers enrolling members in the plan before the members are eligible for membership. Contributions made by employees shall be returned to the employer by reducing future employee contributions due. Contributions, net of fees and investment losses, made by employers shall be used to reduce future employer contributions due.

History - Sec. 122 ch 9 FSSLA 2005; am Sec. 88, 89 ch 20 SLA 2007)

Amendment Notes - The 2007 amendment, effective June 7, 2007, substituted “appropriate account or trusts” for “trust fund” in subsection (a), and added subsections (b) and (c).

### **SEC. 39.35.780. LIMITATIONS ON CONTRIBUTIONS AND BENEFITS.**

Notwithstanding any other provisions of this plan, the annual additions to each member’s individual account under this plan and under all defined contribution plans of the employer required to be aggregated with the contributions from this plan under the provisions of 26 U.S.C. 415 may not exceed, for any limitation year, the amount permitted under 26 U.S.C. 415(c) at any time. If the amount of a member’s individual account contributions exceeds the limitation of 26 U.S.C. 415(c) for any limitation year, the administrator shall take any necessary remedial action to correct an excess contribution. A fixed benefit provided under this plan may not exceed, for or during a limitation year, the amount permitted under 26 U.S.C. 415(b). If a fixed benefit provided under this plan exceeds, for or during a limitation year, the amount permitted under 26 U.S.C. 415(b), the administrator shall take remedial action necessary to comply with the limits on the benefit amount in 26 U.S.C. 415(b). The provisions of 26 U.S.C. 415, and the regulations adopted under that statute, as applied to qualified plans of governmental employees are incorporated as part of the terms and conditions of the plan.

History - (Sec. 122 ch 9 FSSLA 2005; am Sec. 90 ch 20 SLA 2007)

Amendment Notes - The 2007 amendment, effective June 7, 2007, substituted “26 U.S.C. 415(c)” for “26 U.S.C. 415” in the first sentence, substituted “individual account” for “defined contribution plan” in the second sentence, inserted the third and fourth sentences, and deleted “defined contribution” following “qualified” in the last sentence.

**SEC. 39.35.790. VESTING.**

(a) A participating member is immediately and fully vested in that member's contributions and related earnings.

(b) A member shall be fully vested in the employer contributions made on that member's behalf, and related earnings, after five years of service. A member is partially vested in the employer contributions made on that member's behalf, and the related earnings, in the ratio of

- (1) 25 percent with two years of service;
- (2) 50 percent with three years of service; and
- (3) 75 percent with four years of service.

History - (Sec. 122 ch 9 FSSLA 2005)

**SEC. 39.35.800. INVESTMENT OF INDIVIDUAL ACCOUNTS.**

(a) The board shall provide a range of investment options and permit a participant to exercise investment control over the participant's assets in the member's individual account as provided in this section. If a participant exercises control over the assets in the individual account, the participant is not considered a fiduciary for any reason on the basis of exercising that control.

(b) A participant may direct investment of plan funds held in an account among available investment funds in accordance with rules established by the board.

(c) A participant may elect to change or transfer all or a portion of the participant's existing account balance among available investment funds not more often than once each day in accordance with the rules established by the administrator. Only the last election received by the administrator before the transmittal of contributions to the trust fund for allocation to the individual account shall be used to direct the investment of the contributions received.

(d) Except to the extent clearly set out in the terms of the investment plans offered by the employer to the employee, the employer is not liable to the participant for investment losses if the prudent investment standard has been met.

(e) The employer, administrator, state, board, or a person or entity who is otherwise a fiduciary is not liable by reason for any participant's investment loss that results from the participant's directing the investment of plan assets allocated to the participant's account.

(f) To the extent that a member's individual account has been divided as provided in a qualified domestic relations order between participants, each participant shall be treated as the holder of a separate individual account for purposes of investment yields, decisions, transfers, and time limitations imposed by this section.

History - (Sec. 122 ch 9 FSSLA 2005)

### **SEC. 39.35.810. DISTRIBUTION ELECTION AT TERMINATION.**

(a) A member is eligible to elect distribution of the member's account in accordance with this section 60 days after termination of employment.

(b) Notwithstanding (a) of this section, distribution of all or a portion of the individual account of a member may take place before the 60th day after the termination of employment with the approval of the administrator if the member makes a written request for a distribution under this subsection. The member's spouse must consent to the request in writing if the member is married. Distribution of an individual account may only be made on account of an immediate and heavy financial need of the member for the following reasons and in the amount the need is demonstrated for

(1) medical care described in 26 U.S.C. 213(d) incurred by the member, the member's spouse, or the member's dependent, or necessary to obtain that medical care;

(2) the purchase of a principal residence for the member;

(3) postsecondary education tuition and related educational fees for the next 12-month period for the member, the member's spouse, or a dependent of the member; in this paragraph, "dependent" has the meaning given in 26 U.S.C. 152;

(4) prevention of the eviction of the member from the member's principal residence or foreclosure on the mortgage of the member's principal residence; or

(5) any need prescribed by the United States Department of the Treasury, Internal Revenue Service, in a revenue ruling, notice, or other document of general applicability that satisfies the safe harbor definition of hardship under regulations adopted under 26 U.S.C. 401(k).

(c) If a member dies before benefits commence, the member's beneficiary is immediately eligible to elect distribution of the member's share of the member's individual account.

(d) Distributions are payable to an alternate payee in accordance with the terms and conditions of a qualified domestic relations order that is received and approved by the administrator as specified in AS 39.35.860.

(e) Distributions that are being paid to a member may not be affected by the member's subsequent reemployment with the employer. Upon reemployment, a new individual account shall be established for the member to which any future contributions shall be allocated. Upon subsequent termination of employment, the member's new individual account shall be distributed in accordance with this section.

History - (Sec. 122 ch 9 FSSLA 2005)

### **SEC. 39.35.820. FORMS OF DISTRIBUTION.**

(a) A participant may elect to receive the participant's share of the individual account in a

(1) lump sum payment, which is a single payment of the entire balance in the account;

(2) periodic lump sum payment, which is a payment of a portion of the balance in the account, not more than twice each year;

(3) period certain annuity payment, which is an annuity payable in a fixed number of monthly installments for a duration of 60, 120, or 180 months;

(4) life annuity with a period certain payment, which is an annuity payable until the later of the first day of the month in which the annuitant's death occurs, or the date on which the payment of a fixed number of monthly installments is completed; the period certain for installments is 120 or 180 months;

(5) single life annuity payment, which is an annuity payable monthly until the first of the month in which the annuitant's death occurs; or

(6) joint and survivor annuity payment, which is an annuity payable monthly to the member until the first of the month in which the member's death occurs; after the member's death, a survivor annuity equal to 50 percent or 100 percent of the member's benefit, as previously elected by the member, shall be paid monthly to the joint annuitant for the remainder of the survivor's lifetime.

(b) Upon the death of an annuitant whose payments have commenced, an annuitant's beneficiary shall receive further payments only to the extent provided in accordance with the form of payment that was being made to the annuitant. The remaining portion of the interest shall continue to be distributed at least as rapidly as under the method of distribution being used before the annuitant's death.

(c) If a participant dies before the distribution commencement date, distribution of the participant's entire interest to a beneficiary shall be payable in any form other than a joint and survivor annuity.

(d) If an unmarried member or other participant fails to elect a form of payment before the distribution commencement date, the account shall be paid to a beneficiary in the form of a lump sum to the extent required by the minimum distribution requirements set out in the Internal Revenue Code. If a married member fails to elect a form of payment before the distribution commencement date, the account shall be paid in the form of a 50 percent joint and survivor annuity, with the member's spouse as the joint annuitant.

History - (Sec. 122 ch 9 FSSLA 2005)

### **SEC. 39.35.830. MANNER OF ELECTING DISTRIBUTIONS.**

(a) Any election or any alteration or revocation of a prior election by a participant for any purpose under this plan shall be on forms or made in a manner prescribed for that purpose by the plan administrator. To be effective, the forms required or the required action for any purpose under this plan must be completed and received in accordance with regulations adopted by the commissioner of administration.

(b) At any time, but not less than seven days before the benefit commencement date, a member, alternate payee, or beneficiary may change

- (1) the form of payment election;
- (2) an election to commence benefits; or
- (3) the joint annuitant designation.

(c) Changes in elections are not allowed on or after seven days before the benefit commencement date.

History - (Sec. 122 ch 9 FSSLA 2005)

### **SEC. 39.35.840. DISTRIBUTION REQUIREMENTS.**

(a) Payments to a participant shall commence as soon as administratively feasible following the distribution commencement date. The distribution commencement date is the first date on which one of the following occurs:

(1) a member meets the requirements of AS 39.35.810 and has made a complete application for payment under AS 39.35.830;

(2) a participant has elected to defer receipt of the account to a date specified, the date has been attained, and the participant has made a complete application for payment;

(3) a member attains normal retirement age and has not made an application for payment or elected to defer receipt of the account to a date later than normal retirement age;

(4) a member's beneficiary does not make an application for benefits, and five years have elapsed since the member's death;

(5) notwithstanding (1) - (4) of this subsection, a participant whose account has a balance of \$1,000 or less meets the requirements of AS 39.35.810, at which time the participant must take payment of the participant's account.

(b) The entire interest of a member must be distributed or must begin to be distributed not later than the member's required beginning date.

(c) If a member dies after the distribution of the member's interest has begun but before the distribution has been completed, the remaining portion of the interest shall continue to be distributed at least as rapidly as under the method of distribution being used before the member's death.

(d) If a member has made a distribution election and dies before the distribution of the member's interest begins, distribution of the member's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the member's death. However, if any portion of the member's interest is payable to a designated beneficiary, distributions may be made over the life of the designated beneficiary or over a period certain not greater than the life expectancy of the designated beneficiary, commencing on or before December 31 of the calendar year immediately following the calendar year in which the member died, and, if the designated beneficiary is the member's surviving spouse, the date distributions are required to begin may not be earlier than the later of December 31 of the calendar year (1) immediately following the calendar year in which the member died, or (2) in which the member would have attained 70 1/2 years of age, whichever is earlier. If the surviving spouse dies after the member but before payments to the spouse have begun, the provisions of this subsection apply as if the surviving spouse were the member. An amount paid to a child of the member shall be treated as if it were paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.

(e) If a member has not made a distribution election before the member's death, the member's designated beneficiary must elect the method of distribution not later than December 31 of the calendar year (1) in which distributions would be required to begin under this section, or (2) that contains the fifth anniversary

of the date of death of the member, whichever is earlier. If the member does not have a designated beneficiary or if the designated beneficiary does not elect a method of distribution, distribution of the member's entire interest must be completed by December 31 of the calendar year containing the fifth anniversary of the member's death.

(f) For purposes of (b) of this section, distribution of a member's interest is considered to begin (1) on the member's required beginning date, or (2) if the designated beneficiary is the member's surviving spouse and the surviving spouse dies after the member but before payments to the spouse have begun, on the date distribution is required to begin to the surviving spouse. If distribution in the form of an annuity irrevocably commences to the member before the required beginning date, the date distribution is considered to begin is the date that the distribution actually commences.

(g) Notwithstanding any contrary provisions of AS 39.35.700 - 39.35.990, the requirements of this section apply to all distributions of a member's interest and take precedence over any inconsistent provisions of AS 39.35.700 - 39.35.990.

(h) All distributions required under this section are determined and made in accordance with 26 U.S.C. 401(a)(9) and regulations adopted under that statute, including any minimum distribution incidental benefit requirement.

(i) In this section,

(1) "designated beneficiary" means the individual who is designated as the beneficiary under the plan in accordance with 26 U.S.C. 401(a)(9) and regulations adopted under that statute;

(2) "required beginning date" means the first day of April of the calendar year following the calendar year in which the member either attains 70 1/2 years of age or actually terminates employment, whichever is later.

History - (Sec. 122 ch 9 FSSLA 2005)

## **SEC. 39.35.850. DESIGNATION OF BENEFICIARY.**

(a) Each participant shall have the right to designate a beneficiary and shall have the right, at any time, to revoke the designation or to substitute another beneficiary, subject to the following limitation: if a married member elects a nonspouse beneficiary, the value of the benefit payable to the beneficiary may not exceed 50 percent of the member's portion of the account balance, and the member's spouse shall automatically be considered the beneficiary for the remaining 50 percent of the account balance, unless the spouse consents to the beneficiary designation in a writing that is notarized or witnessed by the

administrator. If the spouse consents in this manner, a married member may designate a nonspouse beneficiary for the entire benefit or any portion the benefit as part of an available form of payment contained in this plan,

(1) except to the extent a qualified domestic relations order filed with the administrator provides for payment to a former spouse or other dependent of the member; or

(2) unless the member filed a revocation of beneficiary accompanied by a written consent to the revocation from the present spouse and each person entitled under the order; however, consent of the present spouse is not required if the member and the present spouse had been married for less than one year on the date of the member's death and if the member established when filing the revocation that the member and the present spouse were not cohabiting.

(b) Except as provided in (a) of this section, the member may change or revoke the designation without notice to the beneficiary or beneficiaries at any time. If a member designates more than one beneficiary, each shares equally unless the member specifies a different allocation or preference. The designation of a beneficiary, a change or revocation of a beneficiary, and a consent to revocation of a beneficiary shall be made on a form provided by the administrator and is not effective until filed with the administrator.

(c) If a member fails to designate a beneficiary, or if no designated beneficiary survives the member, the death benefit shall be paid

(1) to the surviving spouse or, if there is none surviving;

(2) to the surviving children of the member in equal parts or, if there are none surviving;

(3) to the surviving parents in equal parts or, if there are none surviving;

(4) to the estate.

(d) A person claiming entitlement to benefits payable under AS 39.35.700 - 39.35.990 as a consequence of a member's death shall provide the administrator with a marriage certificate, divorce or dissolution judgment, or other evidence of entitlement. Documents establishing entitlement may be filed with the administrator immediately after a change in the member's marital status. If the administrator does not receive notification of a claim before the date 10 days after the member's death, the person claiming entitlement is not entitled to receive from the division of retirement and benefits any benefit already paid by the administrator.

History - (Sec. 122 ch 9 FSSLA 2005)

**SEC. 39.35.860. RIGHTS UNDER QUALIFIED DOMESTIC RELATIONS ORDER.**

(a) Notwithstanding the nonalienation provisions in AS 39.35.900(a), the plan administrator may direct that benefits be paid to someone other than a member or beneficiary under a valid qualified domestic relations order that is executed by the judge of a competent court in accordance with applicable state law and that has been accepted by the administrator.

(b) The administrator shall determine whether an order meets the requirements of this section within a reasonable period after receiving an order. The administrator shall notify the member and any alternate payee that an order has been received and indicate to the member and any alternate payee when the order is accepted. A separate account for the alternate payee portion shall be established as soon as administratively feasible after the order has been accepted by the administrator.

History - (Sec. 122 ch 9 FSSLA 2005)

**SEC. 39.35.870. ELIGIBILITY FOR RETIREMENT AND MEDICAL BENEFITS.**

(a) In order to obtain medical benefits under AS 39.35.880, an active member must retire directly from the plan. A member is eligible to retire from the plan if the member has been an active member for at least 12 months before application for retirement and

(1) the member has at least 25 years of membership service as a peace officer or fire fighter or at least 30 years of membership service for all other employees; or

(2) the member reaches the normal retirement age and has at least 10 years of membership service.

(b) The normal retirement age is the age set for Medicare eligibility at the time the member retires.

(c) A member's surviving spouse is eligible to elect medical benefits under AS 39.35.880 if the member had retired, or was eligible for retirement and medical benefits at the time of the member's death.

(d) Members shall apply for retirement and medical benefits on the forms and in the manner prescribed by the administrator.

(e) Participation in the retiree major medical insurance plan is not required in order to participate in the health reimbursement arrangement.

(f) A person eligible for retirement and medical benefits is not required to participate in the health reimbursement arrangement in order to participate in the retiree major medical insurance plan.

(g) An eligible person must make the irrevocable election to participate or not participate in the retiree major medical insurance plan by reaching 70 1/2 years of age, or upon application for retirement and medical benefits, whichever is later.

History - (Sec. 122 ch 9 FSSLA 2005)

### **SEC. 39.35.880. MEDICAL BENEFITS.**

(a) The medical benefits available to eligible persons are access to the retiree major medical insurance plan and to the health reimbursement arrangement under AS 39.30.300. Access to the retiree major medical insurance plan means that an eligible person may not be denied insurance coverage except for failure to pay the required premium.

(b) Retiree major medical insurance plan coverage elected by an eligible member under this section covers the eligible member, the spouse of the eligible member, and the dependent children of the eligible member.

(c) Retiree major medical insurance plan coverage elected by a surviving spouse of an eligible member under this section covers the surviving spouse and the dependent children of the eligible member who are dependent on the surviving spouse.

(d) Major medical insurance coverage takes effect on the first day of the month following the date of the administrator's approval of the election and stops when the person who elects coverage dies or fails to make a required premium payment.

(e) The coverage for persons 65 years of age or older is the same as that available for persons under 65 years of age. The benefits payable to those persons 65 years of age or older supplement any benefits provided under the federal old age, survivors and disability insurance program.

(f) The medical and optional insurance premiums owed by the person who elects coverage may be deducted from the health reimbursement arrangement. If the amount of the health reimbursement arrangement becomes insufficient to pay the premiums, the person who elects coverage under (a) of this section shall pay the premiums directly.

(g) The cost of premiums for retiree major medical insurance coverage for an eligible member or surviving spouse who is

(1) not eligible for Medicare is an amount equal to the full monthly group premiums for retiree major medical insurance coverage;

(2) eligible for Medicare is the following percentage of the premium amounts established for retirees who are eligible for Medicare:

(A) 30 percent if the member had 10 or more, but less than 15, years of service;

(B) 25 percent if the member had 15 or more, but less than 20, years of service;

(C) 20 percent if the member had 20 or more, but less than 25, years of service;

(D) 15 percent if the member had 25 or more, but less than 30, years of service;

(E) 10 percent if the member had 30 or more years of service.

(h) The eligibility for retiree major medical insurance coverage for an alternate payee under a qualified domestic relations order shall be determined based on the eligibility of the member to elect coverage. The alternate payee shall pay the full monthly premium for retiree major medical insurance coverage.

(i) A person who is entitled to retiree major medical insurance coverage shall

(1) be informed by the administrator in writing

(A) that the health insurance coverage available to retired members may be different from the health insurance coverage provided to employees;

(B) of time limits for selecting optional health insurance coverage and whether the election is irrevocable; and

(2) indicate in writing on a form provided by the administrator that the person has received the information required by this subsection and whether the person has chosen to receive optional health insurance coverage.

(j) The monthly group premiums for retiree major medical insurance coverage are established by the administrator in accordance with AS 39.30.095.

Nothing in AS 39.35.700 - 39.35.990 guarantees a person who elects coverage under (a) of this section a monthly group premium rate for retiree major medical insurance coverage other than the premium in effect for the month in which the premium is due for coverage for that month.

(k) In this section, “health reimbursement arrangement” means the plan established in AS 39.30.300.

History - (Sec. 122 ch 9 FSSLA 2005)

**SEC. 39.35.890. OCCUPATIONAL DISABILITY BENEFITS AND REEMPLOYMENT OF DISABLED EMPLOYEES.**

(a) An employee is eligible for an occupational disability benefit if employment is terminated because of a total and apparently permanent occupational disability before the employee’s normal retirement date.

(b) The occupational disability benefits accrue beginning the first day of the month following termination of employment as a result of the disability and are payable the last day of the month. If a final determination granting the benefit is not made in time to pay the benefit when due, a retroactive payment shall be made to cover the period of deferment. The last payment shall be for the first month in which the disabled employee

- (1) dies;
- (2) recovers from the disability;
- (3) fails to meet the requirements under (f), (j), or (m) of this section; or
- (4) reaches normal retirement age.

(c) If the disabled employee becomes ineligible to receive occupational disability benefits before the normal retirement date, the disabled employee shall then be entitled to receive retirement benefits if the employee would have been eligible for the benefit had employment continued during the period of disability. The period of disability constitutes membership service in regard to determining eligibility for retirement.

(d) The monthly amount of an occupational disability benefit is 40 percent of the disabled employee’s gross monthly compensation at the time of termination due to disability. Notwithstanding AS 39.35.790(b), at the time a member is appointed to disability, the member becomes fully vested in the employer contributions made under AS 39.35.750(a). A disabled member is fully vested in the contributions to the member’s individual account made under this subsection. An employee is not entitled to elect distributions from the employee’s individual contribution account under AS 39.35.810 while the

employee is receiving disability benefits under this section. While an employee is receiving disability benefits, based on the disabled employee's gross monthly compensation at the time of termination due to disability, the employer shall make contributions

(1) to the employee's individual account under AS 39.35.730 on behalf of the employee, without deduction from the employee's disability payments; and

(2) on behalf of the employee under AS 39.35.750.

(e) An employee is not entitled to an occupational disability benefit unless the employee files an application for an occupational disability benefit with the administrator within 90 days after the date of terminating employment. If the employee is unable to meet a filing requirement of this subsection, the filing requirement may be waived by the administrator if there are extraordinary circumstances that resulted in the employee's inability to meet the filing requirement.

(f) A disabled employee receiving an occupational disability benefit shall undergo a medical examination as often as the administrator considers advisable, but not more frequently than once each year. The administrator shall determine the place of the examination and engage the physician or physicians. If, in the judgment of the administrator, the examination indicates that the retired employee is no longer incapacitated because of a total and apparently permanent occupational disability, the administrator may not issue further disability benefits to the employee.

(g) A disabled employee's occupational disability benefit terminates the last day of the month in which the disabled employee first qualifies for normal retirement. At that time, the employee's retirement benefit shall be determined under the provisions of AS 39.35.820 - 39.35.840, 39.35.870, and 39.35.880. An employee whose occupational disability benefit terminates under this subsection shall be considered to have retired directly from the plan.

(h) Notwithstanding (g) of this section, at the time a peace officer or fire fighter receiving occupational disability benefits under this section first attains eligibility for normal retirement, the employee shall irrevocably elect to receive retirement benefits in the amount calculated as the

(1) employee's retirement benefit calculated under the provisions of AS 39.35.820 - 39.35.840; or

(2) employee's retirement benefit calculated as if the provisions of AS 39.35.370(c) were to apply; however, pension benefits paid under this paragraph must be paid first from the peace officer's or fire fighter's individual contribution account, and the remaining benefits must be paid from the trust

account established under AS 39.35.750(e); the peace officer or fire fighter may not elect other distributions from the peace officer's or fire fighter's individual contribution account under AS 39.35.810.

(i) Notwithstanding (b)(3) of this section, a peace officer or fire fighter who retires under (h) of this section is not subject to the requirements of (f) or (j) of this section during retirement.

(j) An employee appointed to disability benefits shall apply to the division of vocational rehabilitation within 30 days after the date disability benefits commence. The employee shall be enrolled in a rehabilitation program if the employee meets the eligibility requirements of the division of vocational rehabilitation. Unless the employee demonstrates cause, benefits shall terminate at the end of the first month in which a disabled employee

(1) fails to report to the division of vocational rehabilitation;

(2) is certified by the division of vocational rehabilitation as failing to cooperate in a vocational rehabilitation program;

(3) fails to interview for a job; or

(4) fails to accept a position offered.

(k) Upon the death of a disabled employee who is receiving or is entitled to receive an occupational disability benefit, the administrator shall pay the surviving spouse a surviving spouse's pension, equal to 40 percent of the employee's monthly compensation at the time of termination of employment because of occupational disability. If there is no surviving spouse, the administrator shall pay the survivor's pension in equal parts to the dependent children of the employee. While the monthly survivor's pension is being paid, the survivor is not entitled to elect distributions from the employee's individual contribution account under AS 39.35.810. The first payment of the surviving spouse's pension or of a dependent child's pension shall accrue from the first day of the month following the employee's death and is payable the last day of the month. The last payment shall be made the last day of the last month in which there is an eligible surviving spouse or dependent child, or the last day of the month in which the employee would have first qualified for normal retirement if the employee had survived, whichever day is sooner. A retirement benefit shall be determined under the provisions of AS 39.35.820 - 39.35.840, 39.35.870, and 39.35.880 based on the date the employee would have first qualified for normal retirement if the employee had survived. In addition to payment of the member's individual account, the surviving spouse or, if there is no surviving spouse, the surviving dependent children of the member, shall receive an additional benefit in an amount equal to the accumulated contributions that would have been made to the deceased member's individual account under AS 39.35.730(a) and 39.35.750(a), based on the deceased

member's gross monthly compensation at the time of occupational disability, from the time of the member's death to the date the member would have first qualified for normal retirement if the member had survived. Earnings shall be allocated to the additional benefit calculated under this subsection based on the actual rate of return, net of expenses, of the trust account established under AS 39.35.750(e) over the period that the contributions would have been made. This additional amount and allocated earnings shall be paid in the same manner as determined for the member's individual account under AS 39.35.820 - 39.35.860 to the extent permitted by the Internal Revenue Service. For the purpose of determining eligibility of an employee's survivor who is receiving a benefit under this subsection for medical benefits under AS 39.35.870 - 39.35.880, an employee who died while receiving disability benefits shall be considered to have retired directly from the plan on the date the employee would have first qualified for normal retirement if the employee had survived. The period during which the employee was eligible for a disability benefit and the period during which a survivor's pension is paid to a survivor under this subsection each constitute membership service for the purposes of determining eligibility for medical benefits under AS 39.30.300 - 39.30.495 and AS 39.35.700 - 39.35.990.

(l) While a survivor under (k) of this section is receiving a survivor's pension, the employer of the deceased employee shall make contributions with respect to the survivor based on the deceased employee's gross monthly compensation at the time of termination due to disability

(1) that would have been paid to the employee's individual account under AS 39.35.730 and 39.35.750(a), to the trust account established under AS 39.35.750(e), without deduction from the survivor's pension; and

(2) to the appropriate accounts and funds under AS 39.35.750(b) - (e).

(m) In this section, "occupational disability" means a physical or mental condition that the administrator determines presumably permanently prevents an employee from satisfactorily performing the employee's usual duties or the duties of another comparable position or job available to the employee and for which the employee is qualified by training or education; however, the proximate cause of the condition must be a bodily injury sustained, or a hazard undergone, while in the performance and within the scope of the employee's duties and not the proximate result of the wilful negligence of the employee.

History - (Sec. 122 ch 9 FSSLA 2005; am Sec. 91 - 97 ch 20 SLA 2007)

Revisors Notes - Subsection (l) was enacted as (m); relettered in 2007, at which time former subsection (l) was relettered as (m), and an internal reference in subsection (b) was conformed accordingly.

Amendment Notes - The 2007 amendment, effective June 7, 2007, inserted “or (m)” in paragraph (b)(3), inserted the second, third, and fourth sentences in subsection (d), substituted “the last day of the month in which” for “when” and “qualifies” for “attains eligibility” in the first sentence of subsection (g), substituted “whose occupational disability benefit terminates under this subsection” for “receiving disability benefits up until eligibility for retirement” in the third sentence of subsection (g), rewrote the proviso following paragraph (h)(2), rewrote subsections (k) and (l) [now (m)], and added subsection (m) [now (l)].

**SEC. 39.35.891. DISABILITY BENEFIT AND DISABLED PEACE OFFICER OR FIRE FIGHTER RETIREMENT BENEFIT ADJUSTMENT.**

(a) Once each year, the administrator shall increase disability benefits and retirement benefits elected by disabled peace officers or fire fighters under AS 39.35.890(h)(2). The amount of the increase is a percentage of the current disability benefit or retirement benefit equal to the lesser of 75 percent of the increase in the cost of living in the preceding calendar year or nine percent.

(b) If a disabled member was not receiving a benefit during the entire preceding calendar year, the increase in the benefit under this section shall be adjusted by multiplying it by a fraction, the numerator of which is the number of months for which the benefit was received in the preceding calendar year and the denominator of which is 12.

(c) If a disabled peace officer or fire fighter elects to receive a retirement benefit in the amount calculated under AS 39.35.890(h)(2), the administrator shall, at the time the disabled peace officer or fire fighter is appointed to retirement, increase the retirement benefit by a percentage equal to the total cumulative percentage that has been applied to the disabled peace officer’s or fire fighter’s disability benefit under this section.

(d) An increase in benefit payments under this section is effective July 1 of each year and is based on the percentage increase in the Consumer Price Index for urban wage earners and clerical workers for Anchorage, Alaska, during the previous calendar year, as determined by the United States Department of Labor, Bureau of Labor Statistics.

(e) Benefit adjustments under this section shall terminate the last day of the month following the date on which a disabled member is no longer receiving a disability benefit under AS 39.35.890, unless the member is a disabled peace officer or fire fighter and has chosen a retirement benefit under AS 39.35.890(h)(2).

History - (Sec. 98 ch 20 SLA 2007)

Effective Date Notes - Section 120, ch. 20, SLA 2007, makes this section effective June 7, 2007, in accordance with AS 01.10.070(c).

### **SEC. 39.35.892. OCCUPATIONAL DEATH BENEFIT.**

(a) If (1) the death of an employee occurs before the employee's retirement and before the employee's normal retirement date, (2) the proximate cause of death is a bodily injury sustained or a hazard undergone while in the performance and within the scope of the employee's duties, and (3) the injury or hazard is not the proximate result of wilful negligence of the employee, a monthly survivor's pension shall be paid to the surviving spouse. If there is no surviving spouse or if the spouse later dies, the monthly survivor's pension shall be paid in equal parts to the dependent children of the employee.

(b) The first payment of the surviving spouse's pension or of a dependent child's pension shall be made for the month following the month in which the employee dies. Payments shall cease on the last day of the month in which there is no longer an eligible spouse or eligible dependent child, or the last day of the month following the earliest date the employee would have first qualified for normal retirement if the employee had survived, whichever day is sooner.

(c) The monthly survivor's pension in (b) of this section for survivors of employees who were not peace officers or fire fighters is 40 percent of the employee's monthly compensation in the month in which the employee dies. The monthly survivor's pension in (b) of this section for survivors of employees who were peace officers or fire fighters is 50 percent of the monthly compensation in the month in which the employee dies. While the monthly survivor's pension is being paid, the survivor is not entitled to elect distributions from the employee's individual contribution account under AS 39.35.810, except as required by AS 39.35.840. While the monthly survivor's pension is being paid, the employer shall make contributions with respect to the employee's surviving spouse and employee's surviving dependent children based on the deceased employee's gross monthly compensation at the time of occupational death

(1) that would have been paid to the employee's individual account under AS 39.35.730 and 39.35.750(a), to the trust account established under AS 39.35.750(e), without deduction from the survivor's pension; and

(2) to the appropriate accounts and funds under AS 39.35.750(b) - (e).

(d) If an employee's death is caused by an act of assault, assassination, or terrorism directly related to the person's status as an employee, whether the act occurs on or off the employee's job site, the death shall be considered to have

occurred in the performance of and within the scope of the employee's duties for purposes of (a)(2) of this section. If the expressed or apparent motive and intent of the perpetrator of the harm inflicted upon the employee was due to the performance of the employee's job duties or employment, the death shall be considered to be directly related to the employee's status as an employee. An employee's job duties are those performed within the course and scope of the person's employment with an employer.

(e) On the date the employee would have first qualified for normal retirement if the employee had survived, the retirement benefit shall be determined under the provisions of AS 39.35.820 - 39.35.840, 39.35.870, and 39.35.880. In addition to payment of the member's individual account, the surviving spouse or, if there is no surviving spouse, the surviving dependent children of the member, shall receive an additional benefit in an amount equal to the accumulated contributions that would have been made to the deceased member's individual account under AS 39.35.730(a) and 39.35.750(a), based on the deceased member's gross monthly compensation at the time of occupational death, from the time of the member's death to the date the member would have first qualified for normal retirement if the member had survived. Earnings shall be allocated to the additional benefit calculated under this subsection based on the actual rate of return, net of expenses, of the trust account established under AS 39.35.750(e) over the period that such contributions would have been made. This additional amount and allocated earnings shall be paid in the same manner as determined for the member's individual account under AS 39.35.820 - 39.35.860 to the extent permitted by the Internal Revenue Service. An employee who died and whose survivors receive occupational death benefits under this section shall be considered to have retired directly from the plan on the date the employee would have first qualified for normal retirement if the employee had survived. The period of time during which a survivor's pension is paid under this section constitutes membership service for the purpose of determining vesting in employer contributions under AS 39.35.790(b) and eligibility for medical benefits under AS 39.30.300 - 39.30.495 and AS 39.35.700 - 39.35.990.

History - (Sec. 122 ch 9 FSSLA 2005; am Sec. 99 - 101 ch 20 SLA 2007)

Amendment Notes - The 2007 amendment, effective June 7, 2007, split subsection (b) into two sentences and rewrote the second sentence, inserted the third sentence of subsection (c), substituted "with respect to the employee's surviving spouse and employee's surviving dependent children" for "on behalf of the employee's beneficiaries" in the last sentence of subsection (c), rewrote paragraph (c)(1), substituted "AS 39.35.750(b) - (e)" for "AS 39.35.750," and rewrote subsection (e).

**SEC. 39.35.893. SURVIVOR'S PENSION ADJUSTMENT.**

(a) Once each year, the administrator shall increase payments to a person 60 years of age or older receiving a survivor's pension under AS 39.35.890(k) or 39.35.892(c) and to a person who has received a survivor's pension under AS 39.35.890(k) or 39.35.892(c) for at least five years, who is not otherwise eligible for an increase under this section.

(b) The amount of the increase is a percentage of the current survivor's pension equal to the lesser of 50 percent of the increase in the cost of living in the preceding calendar year or six percent.

(c) If a survivor was not receiving a pension during the entire preceding calendar year, the increase in the survivor's pension under this section shall be adjusted by multiplying it by a fraction, the numerator of which is the number of months for which the pension was received in the preceding calendar year and the denominator of which is 12.

(d) The administrator shall increase the initial survivor's pension paid to a survivor of a member who died while receiving disability benefits by a percentage equal to the total cumulative percentage that has been applied to the member's disability benefit under AS 39.35.891.

(e) An increase in benefit payments under this section is effective July 1 of each year and is based on the percentage increase in the Consumer Price Index for urban wage earners and clerical workers for Anchorage, Alaska, during the previous calendar year, as determined by the United States Department of Labor, Bureau of Labor Statistics.

(f) Pension adjustments under this section shall terminate the last day of the month following the date on which a survivor is no longer receiving a survivor's pension under AS 39.35.890(k) or 39.35.892(c).

History - Sec. 102 ch 20 SLA 2007)

Effective Date Notes - Section 120, ch. 20, SLA 2007, makes this section effective June 7, 2007, in accordance with AS 01.10.070(c).

**SEC. 39.35.894. PREMIUMS FOR RETIREE MAJOR MEDICAL INSURANCE COVERAGE UPON TERMINATION OF DISABILITY BENEFITS OR SURVIVOR'S PENSION.**

The premium for retiree major medical insurance coverage payable by an employee whose disability benefit is terminated under AS 39.35.890(g) or by an eligible survivor whose survivor pension is terminated under

AS 39.35.890(k) or 39.35.892(e) when the employee would have been eligible for normal retirement if the employee had survived shall be determined under AS 39.35.880(g)(2) as if the employee or survivor were eligible for Medicare.

History - (Sec. 102 ch 20 SLA 2007)

Effective Date Notes - Section 120, ch. 20, SLA 2007, makes this section effective June 7, 2007, in accordance with AS 01.10.070(c).

### **SEC. 39.35.895. AMENDMENT AND TERMINATION OF PLAN.**

(a) The state has the right to amend the plan at any time and from time to time, in whole or in part, including the right to make retroactive amendments referred to in 26 U.S.C. 401(b).

(b) The plan administrator may not modify or amend the plan retroactively in such a manner as to reduce the benefits of any member accrued to date under the plan by reason of contributions made before the modification or amendment except to the extent that the reduction is permitted by the Internal Revenue Code.

(c) The state may, in its discretion, terminate the plan in whole or part at any time without liability for the termination. If the plan is terminated, all investments remain in force until all individual accounts have been completely distributed under the plan, and, after all plan liabilities are satisfied, excess assets revert to the employer.

(d) Any contribution made by an employer to the plan because of a mistake of fact must be returned to the employer by the administrator within one year after the contribution or discovery, whichever is later.

History - (Sec. 122 ch 9 FSSLA 2005)

### **SEC. 39.35.900. EXCLUSIVE BENEFIT.**

(a) The corpus or income of the assets held in trust as required by the plan may not be diverted or used for other than the exclusive benefit of the participants.

(b) If plan benefits are provided through the distribution of annuity or insurance contracts, any refunds or credits in excess of plan benefits due to dividends, earnings, or other experience rating credits, or surrender or cancellation credits, shall be paid to the trust fund.

(c) The assets of the plan may not be used to pay premiums or contributions of the employer under another plan maintained by the employer.

(d) The administrator shall use forfeitures in the fixed benefit account of the plan that arise for any reason, including from termination of employment or death, to reduce employer contributions. Forfeitures may not be applied to increase the benefits of any member.

(e) The administrator shall determine the amount of any fixed benefit that is determined on the basis of actuarial tables using assumptions approved by the commissioner. The amount of benefits is not subject to employer discretion.

History - Sec. 122 ch 9 FSSLA 2005; am Sec. 103 ch 20 SLA 2007)

Amendment Notes - The 2007 amendment, effective June 7, 2007, added subsections (d) and (e).

### **SEC. 39.35.910. NONGUARANTEED RETURNS, RATES, OR BENEFIT AMOUNTS.**

The plan created by AS 39.35.700 - 39.35.990 is, with respect to individual accounts, treated as a defined contribution plan, and not a defined benefit plan. The amount of money in the individual account of a participant depends on the amount of contributions and the rate of return from investments of the account that varies over time. If benefits are paid in the form of an annuity, the benefit amount payable is dependent on the amount of money in the account and the interest rates applied and service fees charged by the annuity payor at the time the annuity is purchased from the carrier and benefits are first paid. Nothing in this plan guarantees a participant

(1) a rate of return or interest rate other than that actually earned by the account of the participant, less applicable administrative expenses; or

(2) an annuity based on interest rates or service charges other than interest rates available from and service charges by the annuity payor in effect at the time the annuity is paid.

History - (Sec. 122 ch 9 FSSLA 2005; am Sec. 104 ch 20 SLA 2007)

Amendment Notes - The 2007 amendment, effective June 7, 2007, inserted “with respect to individual accounts, treated as” and “and” in the first sentence, inserted “individual” in the second sentence, and inserted “the annuity is purchased from the carrier and” in the third sentence.

### **SEC. 39.35.920. NONGUARANTEED EMPLOYMENT.**

The provisions of AS 39.35.700 - 39.35.990 are not a contract of employment between an employer and an employee, nor do they confer a right of an employee to be continued in the employment of an employer, nor are they a limitation of the right of an employer to discharge an employee with or without cause.

History - (Sec. 122 ch 9 FSSLA 2005)

**SEC. 39.35.930. FRAUD.**

(a) A person who knowingly makes a false statement or falsifies or permits to be falsified a record of this plan in an attempt to defraud the plan is guilty of a class A misdemeanor.

(b) In this section, “knowingly” has the meaning given in AS 11.81.900(a).

History - (Sec. 122 ch 9 FSSLA 2005)

**SEC. 39.35.932. PENSION FORFEITURE.**

The provisions of AS 37.10.310 apply to pension benefits under AS 39.35.700 - 39.35.990.

History - (Sec. 53 ch 47 SLA 2007)

Effective Date Notes - Section 79, ch. 47, SLA 2007, makes this section effective July 10, 2007, in accordance with AS 01.10.070(c).

**SEC. 39.35.940. TRANSFER INTO DEFINED CONTRIBUTION PLAN  
BY NONVESTED MEMBERS OF DEFINED BENEFIT PLAN.**

(a) Subject to (i) of this section, an active member of the defined benefit retirement plan of the public employees’ retirement system is eligible to participate in the defined contribution retirement plan established under AS 39.35.700 - 39.35.990 if that member has not vested. Participation in the defined contribution retirement plan is in lieu of participation in the defined benefit retirement plan established under AS 39.35.095 - 39.35.680.

(b) A member who has vested in a defined benefit retirement plan is not eligible to transfer under this section.

(c) Each eligible member who elects to participate in the defined contribution retirement plan shall have transferred to a new account the employee contribution account balance held in trust for the member under the defined benefit retirement plan of the public employees’ retirement system. A matching employer contribution shall be made on behalf of that employee to the new account. The employer shall make the matching contribution from funds other than the trust funds of the defined benefit retirement plan established under AS 39.35.095 - 39.35.680. The amount of the matching employer contribution shall be subject to, and may not exceed, the limitation of 26 U.S.C. 415(c) during the applicable limitation year as defined by AS 39.35.990. If the matching employer contribution would exceed the limits during the limitation year in which the transfer occurs, the remaining amount of the matching employer contribution shall be made in the next limitation year, if the limits would not be exceeded.

(d) Upon a transfer, all membership service previously earned under the defined benefit retirement plan shall be nullified for purposes of entitlement to a future benefit under the defined benefit retirement plan but shall be credited for purposes of determining vesting in employer contributions under AS 39.35.790(b) and eligibility to elect medical benefits under AS 39.35.870. Membership service allowed for credit toward medical benefits does not include any service credit purchased for employment by an employer who is not a participating employer in this chapter.

(e) An eligible member whose accounts are subject to a qualified domestic relations order may not make an election to participate in the defined contribution retirement plan under this subsection unless the qualified domestic relations order is amended or vacated and court-certified copies of the order are received by the administrator.

(f) As directed by the participant, the board shall transfer or cause to be transferred the appropriate amounts to the designated account. The board shall establish transfer procedures by regulation, but the actual transfer may not be later than 30 days after the effective date of the member's participation in the defined contribution retirement plan unless the major financial markets for securities available for a transfer are seriously disrupted by an unforeseen event that also causes the suspension of trading on any national securities exchange in the country where the securities were issued. In that event, the 30-day period of time may be extended by a resolution of the board of trustees. Transfers are not commissionable or subject to other fees and may be in the form of securities or cash as determined by the board. Securities shall be valued as of the date of receipt in the participant's account.

(g) If the board or the administrator receives notification from the United States Department of the Treasury, Internal Revenue Service, that this section or a portion of this section will cause the retirement system under this chapter, or a portion of the retirement system under this chapter, to be disqualified for tax purposes under the Internal Revenue Code, the portion that will cause the disqualification does not apply, and the board and the administrator shall notify the presiding officers of the legislature.

(h) An employee who is eligible to elect transfer to the defined contribution retirement plan must make the election not later than 12 months after the first day of the month following the administrator's receipt of the notification that the employee's employer consents to transfers of its employees under (i) of this section. The election to participate in the defined contribution retirement plan must be made in writing on forms and in the manner prescribed by the administrator. Before accepting an election to participate in the defined contribution retirement plan, the administrator must provide the employee planning on making an election to participate in the defined contribution retirement plan with information, including calculations to illustrate the effect

of moving the employee's retirement plan from the defined benefit retirement plan to the defined contribution retirement plan as well as other information to clearly inform the employee of the potential consequences of the employee's election. An election made under this subsection to participate in the defined contribution retirement plan is irrevocable. Upon making the election, the participant shall be enrolled as a member of the defined contribution retirement plan, the member's participation in the plan shall be governed by the provisions of AS 39.35.700 - 39.35.990, and the member's participation in the defined benefit retirement plan under AS 39.35.115 shall terminate. The participant's enrollment in the defined contribution retirement plan shall be effective the first day of the month after the administrator receives the completed enrollment forms. An election made by an eligible member who is married is not effective unless the election is signed by the individual's spouse.

(i) A member may make an election under this section only if the member's employer participates in both the defined benefit retirement plan and the defined contribution retirement plan and consents to transfers under this section. The employer shall notify the administrator if the employer consents to allowing the employer's members to choose to transfer from the defined benefit retirement plan to the defined contribution retirement plan under this section. An employer's notice to allow transfers is irrevocable and applicable to all eligible employees of the employer.

(j) In this section,

(1) "defined benefit retirement plan" means the retirement plan established in AS 39.35.095 - 39.35.680;

(2) "defined contribution retirement plan" means the retirement plan established in AS 39.35.700 - 39.35.990.

History - (Sec. 122 ch 9 FSSLA 2005; am Sec. 105 - 107 ch 20 SLA 2007)

Amendment Notes - The 2007 amendment, effective June 7, 2007, added the last two sentences of subsection (c), inserted "determining vesting in employer contributions under AS 39.35.790(b) and" in subsection (d), and added the first sentence of subsection (h).

### **SEC. 39.35.950. REQUEST BY POLITICAL SUBDIVISION TO PARTICIPATE AND ADOPTION OF RESOLUTION.**

A municipality or other political subdivision of the state may request to become an employer in this plan. The request shall be made after adoption of a resolution by the legislative body of the political subdivision and after approval of the resolution by the person required by law to approve the resolution. A

certified copy of the resolution shall be filed with the administrator. If the administrator approves the request for participation, the political subdivision is an employer of the plan.

History - (Sec. 122 ch 9 FSSLA 2005)

**SEC. 39.35.955. REQUEST BY PUBLIC ORGANIZATION TO PARTICIPATE AND ADOPTION OF RESOLUTION.**

A public organization may request to become an employer in this plan. The request shall be made after adoption of a resolution by the governing body of the public organization. A certified copy of the resolution shall be filed with the administrator. If the administrator approves the request for participation, the public organization is an employer of the plan.

History - (Sec. 122 ch 9 FSSLA 2005)

**SEC. 39.35.957. DESIGNATION OF ELIGIBLE EMPLOYEES, AGREEMENT TO CONTRIBUTE, AND AMENDMENT OF PARTICIPATION.**

(a) A political subdivision or public organization participating in the defined contribution retirement plan under AS 39.35.700 - 39.35.990 shall designate the departments, groups, or other classifications of employees eligible to participate in the plan and, by participating, shall legally be presumed to have agreed to make contributions each year in the amounts required for members of the plan under AS 39.35.750.

(b) If the employer does not participate in the defined benefit retirement plan under AS 39.35.095 - 39.35.680, an employee who is eligible under (a) of this section and who is a member of the defined benefit retirement plan under AS 39.35.095 - 39.35.680 does not accrue credited service or make contributions under that defined benefit retirement plan, but shall be a member of the defined contribution retirement plan under AS 39.35.700 - 39.35.990 and make contributions under that plan.

(c) An employer may request to amend its participation in the plan to add or exclude departments, groups, or other classifications of employees by filing a resolution as provided by AS 39.35.950 or 39.35.955 with the administrator.

History - (Sec. 108 ch 20 SLA 2007)

Effective Date Notes - Section 120, ch. 20, SLA 2007, makes this section effective June 7, 2007, in accordance with AS 01.10.070(c).

**SEC. 39.35.958. TERMINATION OF PARTICIPATION IN THE PLAN.**

(a) A political subdivision or public organization may request that its participation in the plan be terminated. The request may be made only after adoption of a resolution by the legislative body of the political subdivision and approval of the resolution by the person required by law to approve the resolution, or, in the case of a public organization, after adoption of a resolution by the governing body of that public organization. A certified copy of the resolution shall be filed with the administrator.

(b) If contributions are not transmitted to the plan within the prescribed time limit, the administrator may grant an extension and shall assess interest on the outstanding contributions at the rate established under AS 39.35.610. If the political subdivision or public organization is in default at the end of the extension, participation in the plan is terminated, and the political subdivision or public organization shall be sent notice of termination.

(c) When an employer's participation in the plan is terminated, or when an employer terminates coverage of a department, group, or other classification of employees under AS 39.35.957(c), the administrator shall assess the employer a termination cost that the administrator determines is actuarially required to fully fund the costs to the plan for employees whose coverage is terminated, including the cost of providing the employer's share of retiree health benefits under AS 39.35.880, occupational disability and occupational death benefits under AS 39.35.890 and 39.35.892, and pension benefits elected under AS 39.35.890(h)(2).

(d) An employee whose coverage under the plan is terminated as a result of termination of an employer's participation under this section or amendment of the employer's agreement under AS 39.35.957(c) shall be considered fully vested in employer contributions under AS 39.35.790(b) and in the individual account established for the employee under AS 39.30.730. If the employee is later employed with a participating employer, the employee's membership service earned under the plan during employment with a terminated employer shall be credited for purposes of determining vesting in employer contributions under AS 39.35.790(b) and eligibility for medical benefits under this chapter and AS 39.30.300 - 39.30.495.

(e) An employer terminating participation in the plan shall pay termination costs determined by the administrator, or enter into a payment plan acceptable to the administrator, within 60 days after the employer receives notice of its termination costs from the administrator. Termination costs not paid within the prescribed time limit or in accordance with the approved payment plan shall be collected by the administrator in accordance with AS 39.35.610(b). Termination of participation by an employer in the plan does not bar future participation by the employer if the employer has paid in full its prior termination costs.

(f) A political subdivision or public organization considering or requesting termination from the plan shall pay the cost associated with obtaining a termination cost study associated with the employer's termination.

History - (Sec. 108 ch 20 SLA 2007)

Effective Date Notes - Section 120, ch. 20, SLA 2007, makes this section effective June 7, 2007, in accordance with AS 01.10.070(c).

### **SEC. 39.35.960. MEMBERSHIP IN TEACHERS' AND PUBLIC EMPLOYEES' RETIREMENT SYSTEMS.**

A person who is employed at least half-time in the public employees' defined contribution retirement plan (AS 39.35.700 - 39.35.990) during the same period that the person is employed at least half-time in a position in the teachers' defined contribution retirement plan (AS 14.25.310 - 14.25.590) shall receive credited service under each plan for half-time employment. However, the amount of credited service a person receives under the public employees' defined contribution retirement plan during a school year may not exceed the amount necessary, when added to the amount of credited service earned during the school year under the teachers' defined contribution retirement plan, to equal one year of credited service.

History - (Sec. 122 ch 9 FSSLA 2005)

### **SEC. 39.35.965. ARMY AND AIR NATIONAL GUARD EMPLOYEES.**

A regular full-time civilian employee of the Alaska Army National Guard and Air National Guard whose entire salary is paid from allotted federal funds is included in the public employees' defined contribution retirement plan (AS 39.35.700 - 39.35.990) if the federal or state government pays the employer's contributions. If the amount that the federal government may legally contribute to the plan is lower than the required employer's contribution, the state government shall contribute the difference. If the employer's contributions are not paid when due, service credit for the period of delinquency may not be granted until the contributions are paid.

History - (Sec. 122 ch 9 FSSLA 2005)

### **SEC. 39.35.970. NORTH PACIFIC FISHERY MANAGEMENT COUNCIL EMPLOYEES.**

An employee of the North Pacific Fishery Management Council appointed under 16 U.S.C. 1852(f)(1)(Sec. 302(f)(1) of P.L. 94-265) whose compensation is paid from allotted federal funds is included in the public employees' defined contribution retirement plan (AS 39.35.700 - 39.35.990) if the council pays the

employer's contributions. If the employer's contributions are not paid when due, credited service for the period of delinquency may not be granted until the contributions are paid.

History - (Sec. 122 ch 9 FSSLA 2005)

**SEC. 39.35.972. SPECIAL RULES FOR TREATMENT OF QUALIFIED MILITARY SERVICE.**

Notwithstanding any contrary provisions of AS 39.35.700 - 39.35.990, with respect to qualified military service, contributions shall be made and benefits and service credit shall be provided in accordance with 26 U.S.C. 414(u).

History - (Sec. 109 ch 20 SLA 2007)

Effective Date Notes - Section 120, ch. 20, SLA 2007, makes this section effective June 7, 2007, in accordance with AS 01.10.070(c).

**SEC. 39.35.990. DEFINITIONS.**

In AS 39.35.700 - 39.35.990, unless the context requires otherwise,

(1) "administrator" means the commissioner of administration or the commissioner's designee;

(2) "alternate payee" means the person for whom an amount has been separated into an account under a qualified domestic relations order;

(3) "annuitant" means a member, beneficiary, or alternate payee who is receiving a benefit under this plan;

(4) "beneficiary" means the person or persons entitled under the provisions of this plan to receive benefits after the death of a member or alternate payee;

(5) "board" has the meaning given in AS 39.35.680;

(6) "calendar year" has the meaning given in AS 39.35.680;

(7) "compensation"

(A) means

(i) the total remuneration earned by an employee for personal services rendered, including cost-of-living differentials, as reported on the employee's Federal Income Tax Withholding Statement (Form W-2) from the employer for the calendar year;

(ii) the member contribution to the public employees' retirement system under AS 39.35.730, employee deferrals under AS 39.45.010, the wage reduction amount contributed to the Alaska Supplemental Annuity Plan under AS 39.30.150(a), and the wage reduction amount contributed to the Alaska Supplemental Benefit Plan under AS 39.30.150(c), as those statutes may be amended from time to time;

(B) does not include retirement benefits, severance pay or other separation bonuses, welfare benefits, per diem, expense allowances, workers' compensation payments, payments for leave not used whether those leave payments are scheduled payments, lump-sum payments, donations, or cash-ins, any remuneration contributed by the employer for or on account of the employee under this plan or under any other qualified or nonqualified employee benefit plan, or any remuneration not specifically included above which would have been excluded under 26 U.S.C. 3121(a) (Internal Revenue Code) if the employer had remained in the Federal Social Security System;

(C) notwithstanding (B) of this paragraph, includes any amount that is contributed by the employer under a salary reduction agreement and that is not includible in the gross income of the employee under 26 U.S.C. 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), or 403(b) (Internal Revenue Code); the annual compensation limitation for the member, which is so taken into account for those purposes, may not exceed \$200,000, as adjusted for the cost of living in accordance with 26 U.S.C. 401(a)(17)(B) (Internal Revenue Code), with the limitation for a fiscal year being the limitation in effect for the calendar year within which the fiscal year begins;

(8) "dependent child" has the meaning given in AS 39.35.680;

(9) "distribution commencement date" has the meaning given in AS 39.35.840(a);

(10) "employer" means

(A) the State of Alaska; or

(B) a political subdivision or public organization of the state that participates in the plan;

(11) "fund" means the assets of the plan;

(12) "individual account" means the total maintained by the plan in an investment account within the trust fund, established for each member for the purposes of allocation of the member's contributions, the employer's contributions on behalf of the member, and earnings credited to each of those contributions, investment gains and losses, and expenses; as well as reporting of the member's benefit under the plan;

(13) “Internal Revenue Code” means the Internal Revenue Code of 1986, as amended;

(14) “investment funds” means those separate funds that are provided within and that make up the trust fund and that are established for the purpose of directing investment through the exercise of the sole control of a member, beneficiary, or alternate payee under the terms of the plan and trust agreement;

(15) “limitation year” means the year for which contributions are made to a member’s individual account as reported to the Internal Revenue Service and as meets the limits described in 26 U.S.C. 415(c);

(16) “member” or “employee” means a person who is eligible to participate in the plan and who is covered by the plan, including the governor, the lieutenant governor, and a member of the legislature, but does not include full-time or part-time instructors of the Department of Labor and Workforce Development and the Department of Education and Early Development in positions that require a teaching certificate;

(17) “membership service” means full-time or part-time employment with an employer in the plan;

(18) “normal retirement age” means the age set for Medicare eligibility at the time the member retires;

(19) “participant” means the person who has a vested right to an individual account, such as a member, an alternate payee if the account is subject to a qualified domestic relations order, the member’s beneficiary if the member is deceased, or an alternate payee’s beneficiary if the alternate payee is deceased;

(20) “peace officer” or “fire fighter” means an employee occupying a position as a peace officer, chief of police, regional public safety officer, correctional officer, correctional superintendent, fire fighter, fire chief, or probation officer, but does not include a village public safety officer employed by a village public safety officer program established under AS 18.65.670;

(21) “plan” means the retirement plan established in AS 39.35.700 - 39.35.990;

(22) “prudent investment standard” means the degree of care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(23) “qualified domestic relations order” means a divorce or dissolution judgment under AS 25.24, including an order approving a property settlement, that

(A) creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of an individual account or the benefits payable with respect to a member;

(B) sets out the name and last known mailing address, if any, of the member and of each alternate payee covered by the order;

(C) sets out the amount or percentage of the member's benefit, or of any survivor's benefit, to be paid to the alternate payee, or sets out the manner in which that amount or percentage is to be determined;

(D) sets out the number of payments or period to which the order applies;

(E) sets out the retirement plan to which the order applies;

(F) does not require any type or form of benefit or any option not otherwise provided by AS 39.35.700 - 39.35.990;

(G) does not require an increase of benefits in excess of the amount provided by AS 39.35.700 - 39.35.990; and

(H) does not require the payment to an alternate payee of benefits that are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order;

(24) "retiree" means an eligible person who has elected to receive medical benefits under AS 39.35.880;

(25) "surviving spouse" means the spouse of an employee who has been married to the employee for at least one year at the time of the employee's death;

(26) "system" has the meaning given in AS 39.35.680;

(27) "year of service" means the equivalent of 52 weeks of permanent full-time employment, which may consist of a combination of permanent full-time or permanent part-time membership service; in this paragraph, "permanent full-time" and "permanent part-time" have the meanings given in AS 39.35.680.

History - (Sec. 122 ch 9 FSSLA 2005; am Sec. 110 - 112 ch 20 SLA 2007)

Amendment Notes - The 2007 amendment, effective June 7, 2007, deleted "or any remuneration paid by the employer in excess of the social security taxable wage base for the calendar year" at the end of paragraph (7)(B), and rewrote paragraphs (16) and (20).

## **ARTICLE 11. GENERAL PROVISIONS APPLICABLE TO TITLE**

### **SEC. 39.35.995. SHORT TITLE.**

This chapter may be cited as the Public Employees' Retirement System of Alaska.

History - (Sec. 1 ch 143 SLA 1960)

Revisors Notes - Enacted as AS 39.35.690; renumbered in 2005 in accordance with Sec. 144(f), ch. 9, FSSLA 2005.

# **Alaska Statutes**

## **TITLE 39. PUBLIC OFFICERS AND EMPLOYEES.**

### **CHAPTER 30. INSURANCE AND SUPPLEMENTAL EMPLOYEE BENEFITS**

#### Article

1. Group Life and Health Insurance (Secs. 39.30.090--39.30.100)
2. Supplemental Employee Benefits on Withdrawal of Social Security (Secs. 39.30.150--39.30.180)

### **ARTICLE 02. GROUP LIFE AND HEALTH INSURANCE**

#### **SEC. 39.30.090. PROCUREMENT OF GROUP INSURANCE.**

(a) The Department of Administration may obtain a policy or policies of group insurance covering state employees, persons entitled to coverage under AS 14.25.168, 14.25.480, AS 22.25.090, AS 39.35.535, 39.35.880, or former AS 39.37.145, employees of other participating governmental units, or persons entitled to coverage under AS 23.15.136, subject to the following conditions:

(1) A group insurance policy shall provide one or more of the following benefits: life insurance, accidental death and dismemberment insurance, weekly indemnity insurance, hospital expense insurance, surgical expense insurance, dental expense insurance, audiovisual insurance, or other medical care insurance.

(2) Each eligible employee of the state, the spouse and the unmarried children chiefly dependent on the eligible employee for support, and each eligible employee of another participating governmental unit shall be covered by the group policy, unless exempt under regulations adopted by the commissioner of administration.

(3) A governmental unit may participate under a group policy if

(A) its governing body adopts a resolution authorizing participation, and payment of required premiums;

(B) a certified copy of the resolution is filed with the Department of Administration; and

(C) the commissioner of administration approves the participation in writing.

(4) In procuring a policy of group health or group life insurance as provided under this section or excess loss insurance as provided in AS 39.30.091, the Department of Administration shall comply with the dual choice requirements of AS 21.86.310, and shall obtain the insurance policy from an insurer authorized to transact business in the state under AS 21.09, a hospital or medical service corporation authorized to transact business in this state under AS 21.87, or a health maintenance organization authorized to operate in this state under AS 21.86. An excess loss insurance policy may be obtained from a life or health insurer authorized to transact business in this state under AS 21.09 or from a hospital or medical service corporation authorized to transact business in this state under AS 21.87.

(5) The Department of Administration shall make available bid specifications for desired insurance benefits or for administration of benefit claims and payments to (A) all insurance carriers authorized to transact business in this state under AS 21.09 and all hospital or medical service corporations authorized to transact business under AS 21.87 who are qualified to provide the desired benefits; and (B) to insurance carriers authorized to transact business in this state under AS 21.09, hospital or medical service corporations authorized to transact business under AS 21.87, and third-party administrators licensed to transact business in this state and qualified to provide administrative services.

The specifications shall be made available at least once every five years. The lowest responsible bid submitted by an insurance carrier, hospital or medical service corporation, or third-party administrator with adequate servicing facilities shall govern selection of a carrier, hospital or medical service corporation, or third-party administrator under this section or the selection of an insurance carrier or a hospital or medical service corporation to provide excess loss insurance as provided in AS 39.30.091.

(6) If the aggregate of dividends payable under the group insurance policy exceeds the governmental unit's share of the premium, the excess shall be applied by the governmental unit for the sole benefit of the employees.

(7) A person receiving benefits under AS 14.25.110, AS 22.25, AS 39.35, or former AS 39.37 may continue the life insurance coverage that was in effect under this section at the time of termination of employment with the state or participating governmental unit.

(8) A person electing to have insurance under (7) of this subsection shall pay the cost of this insurance.

(9) For each permanent part-time employee electing coverage under this section, the state shall contribute one-half the state contribution rate for permanent full-time state employees, and the permanent part-time employee shall contribute the other one-half.

(10) A person receiving benefits under AS 14.25, AS 22.25, AS 39.35, or former AS 39.37 may obtain auditory, visual, and dental insurance for that person and eligible dependents under this section. The level of coverage for persons over 65 shall be the same as that available before reaching age 65 except that the benefits payable shall be supplemental to any benefits provided under the federal old age, survivors, and disability insurance program. A person electing to have insurance under this paragraph shall pay the cost of the insurance. The commissioner of administration shall adopt regulations implementing this paragraph.

(11) A person receiving benefits under AS 14.25, AS 22.25, AS 39.35, or former AS 39.37 may obtain long-term care insurance for that person and eligible dependents under this section. A person who elects insurance under this paragraph shall pay the cost of the insurance premium. The commissioner of administration shall adopt regulations to implement this paragraph.

(12) Each licensee holding a current operating agreement for a vending facility under AS 23.15.010 - 23.15.210 shall be covered by the group policy that applies to governmental units other than the state.

(b) In this section

## (1) “eligible employee” means

(A) an employee who has served in permanent full-time or part-time employment with the same governmental unit for 30 days or more, except an emergency or temporary employee;

(B) an elected or appointed official of a governmental unit, effective upon taking the oath of office; and

(C) a contractual employee of the legislative branch of state government under AS 24.10.060(f) if the employee’s personal services contract provides that the employee is entitled to coverage;

(2) “governmental unit” means the state, a municipality, school district, or other political subdivision of the state, and the North Pacific Fishery Management Council;

(3) “insurance”, “insurance carrier” and “insurance policy” include health care services, health care service contractors and contracts, and health maintenance organizations.

History - (Sec. 1, 2 ch 151 SLA 1955; am Sec. 1 ch 168 SLA 1959; am Sec. 1, 2 ch 105 SLA 1965; am Sec. 1 ch 70 SLA 1968; am Sec. 66 ch 69 SLA 1970; am Sec. 1 ch 123 SLA 1970; am Sec. 1 ch 159 SLA 1972; am Sec. 1, 2 ch 46 SLA 1973; am Sec. 13, 14 ch 47 SLA 1974; am Sec. 2, 3 ch 27 SLA 1976; am Sec. 2 ch 86 SLA 1977; am Sec. 39 ch 177 SLA 1978; am Sec. 1 ch 55 SLA 1979; am Sec. 1 ch 62 SLA 1981; am Sec. 37 ch 137 SLA 1982; am Sec. 1 ch 46 SLA 1984; am Sec. 13, 14 ch 82 SLA 1986; am Sec. 2 ch 38 SLA 1990; am Sec. 2, 3 ch 95 SLA 1990; am Sec. 67 - 69 ch 63 SLA 1993; am Sec. 106 ch 56 SLA 1996; am Sec. 3 ch 22 SLA 1998; am Sec. 69 ch 9 FSSLA 2005)

Revisors Notes - Subsection (b) was formerly AS 39.30.100. Renumbered in 1987.

Cross References - For the purpose of the 1978 amendatory act, see Sec. 1, ch. 177, SLA 1978 as amended by Sec. 7, ch. 46, SLA 1982, in the 1982 Temporary and Special Acts and Resolves. For limited enrollment period for certain previously ineligible persons to apply for coverage under paragraph (7) of this section, see Sec. 2, ch. 46, SLA 1984 in the Temporary and Special Acts. For legislative intent concerning the 1998 amendment to paragraph (b) (1), see Sec. 1, ch. 22, SLA 1998 in the 1998 Temporary and Special Acts.

Amendment Notes - The 2005 amendment, effective July 1, 2006, added section references in the introductory language of subsection (a).

Editors Notes - Section 87, ch. 63, SLA 1993 provides “[i]f any section of this bill is found to violate the single subject rule it is severed from the rest of the bill.”

AG Opinions - Because health insurance deals with the economic interests of employees and does not deal with fundamental policy; because this section, the group insurance statute, authorizes the Department of Administration to obtain “a policy or policies”; and because this section does not specify what levels of coverage or benefits must be included in the policy (or policies) obtained, the issue of group life and health insurance benefits is negotiable under the Public Employment Relations Act (AS 23.40.070 - 23.40.260). January 23, 1978 Op. Att’y Gen.

To the extent the cost of negotiated group life and health insurance coverage exceeds what the state would have paid under its employer-sponsored plan, the negotiated coverage is subject to legislative approval under AS 23.40.215. January 23, 1978 Op. Att’y Gen.

Decisions - Applicability of benefits to same-sex couples. - Employee benefits programs, which included the life and health insurance benefits described in this section, violated the rights of same-sex couples under Alaska Const. art. I, Sec. 1, by covering married public employees but not domestic partners. *Alaska Civ. Liberties Union v. State*, 122 P.3d 781 (Alaska 2005).

Applied in *University of Alaska v. Tumeo*, 933 P.2d 1147 (Alaska 1997).

Article Notes - Administrative Code. For group health and life insurance, see 2 AAC 39.

### **SEC. 39.30.091. AUTHORIZATION FOR SELF-INSURANCE AND EXCESS LOSS INSURANCE.**

Notwithstanding AS 21.86.310 or AS 39.30.090, the Department of Administration may provide, by means of self-insurance, one or more of the benefits listed in AS 39.30.090(a)(1) for state employees eligible for the benefits by law or under a collective bargaining agreement and for persons receiving benefits under AS 14.25, AS 22.25, AS 39.35, or former AS 39.37, and their dependents. The department shall procure any necessary excess loss insurance under AS 39.30.090.

History - (Sec. 69 ch 63 SLA 1993; am Sec. 27 ch 68 SLA 2000)

Editors Notes - Section 87, ch. 63, SLA 1993 provides “[i]f any section of this bill is found to violate the single subject rule it is severed from the rest of the bill.”

### **SEC. 39.30.095. GROUP HEALTH AND LIFE BENEFITS FUND.**

(a) The commissioner of administration shall establish the group health and life benefits fund as a special account in the general fund to provide for group life and health insurance under AS 39.30.090 and 39.30.160 or for

self-insurance arrangements under AS 39.30.091. The commissioner shall maintain accounts and records for the fund. The fund consists of employer contributions, employee contributions, appropriations from the legislature, and income earned on investment of the fund as provided in (d) of this section.

(b) After obtaining the advice of an actuary, the commissioner of administration shall determine the amount necessary to provide benefits under AS 39.30.090, 39.30.091, and 39.30.160 and, subject to (e) of this section, shall set the rate of employer contribution and employee contribution, if any. With money in the fund, the commissioner of administration shall pay premiums, claims, and administrative costs required under the insurance policies in effect under AS 39.30.090 and 39.30.160, or required under self-insurance arrangements in effect under AS 39.30.091.

(c) The commissioner of administration or the designee of the commissioner is administrator of the fund. The commissioner may contract with

(1) an insurer authorized to transact business in this state under AS 21.09, or a hospital or medical service corporation authorized to transact business in this state under AS 21.87 to reimburse the state for the cost of administering group insurance provided under AS 39.30.090 and 39.30.160; and

(2) a life or health insurer authorized to transact business in the state under AS 21.09, a hospital or medical service corporation authorized to transact business in this state under AS 21.87, or a third-party administrator licensed to transact business in this state for the administration of benefit claims and payments under AS 39.30.091.

(d) If the commissioner of administration determines that there is more money in the fund than the amount needed to pay premiums, benefits, and administrative costs for the current fiscal year, the surplus, or so much of it as the commissioner of administration considers advisable, may be invested by the commissioner of revenue in the same manner as retirement funds are invested under AS 37.10.220.

(e) Notwithstanding (b) of this section, the rate of employer contribution to provide hospital, surgical, dental, audiovisual, and other medical care benefits under AS 39.30.091 is \$515 monthly beginning July 1, 2000; \$575 monthly beginning July 1, 2001; and \$630 monthly beginning July 1, 2002, for the following employees and officials:

(1) employees in the executive branch of the state government, including the governor and lieutenant governor, who are not members of a collective bargaining unit established under the authority of AS 23.40.070 - 23.40.260 (Public Employment Relations Act);

(2) officials and employees of the legislative branch of state government under AS 24;

(3) employees in the judicial branch of state government, including magistrates and other judicial officers, who are not members of a collective bargaining unit established under AS 23.40.070 - 23.40.260 (Public Employment Relations Act).

(f) In this section, “fund” means the group health and life benefits fund.

History - (Sec. 38 ch 137 SLA 1982; am Sec. 57 ch 138 SLA 1986; am Sec. 27, 28 ch 141 SLA 1988; am Sec. 70 - 73 ch 63 SLA 1993; am Sec. 107 ch 56 SLA 1996; am Sec. 6, 7 ch 2 TSSLA 2000; am Sec. 70 ch 9 FSSLA 2005)

Revisors Notes - Subsection (e) was enacted as (f). Relettered in 2000, at which time former subsection (e) was relettered as (f) and a conforming amendment was made in subsection (b).

Amendment Notes - The 2005 amendment, effective July 28, 2005, updated a section reference at the end of subsection (d).

Editors Notes - Section 87, ch. 63, SLA 1993 provides “[i]f any section of this bill is found to violate the single subject rule it is severed from the rest of the bill.”

**SEC. 39.30.096. ACCOUNTING AND DISPOSITION OF FEES.  
[REPEALED, SEC. 28 CH 90 SLA 1991].**

Repealed or Renumbered

**SEC. 39.30.097. ALASKA RETIREE HEALTH CARE TRUSTS.**

(a) The commissioner of administration is authorized to prefund medical benefits provided by AS 14.25.168, AS 22.25.090, and AS 39.35.535 by establishing an irrevocable trust that is exempt from federal income tax under 26 U.S.C. 115 and subject to the applicable financial reporting, disclosure, and actuarial requirements of the Governmental Accounting Standards Board.

(b) The commissioner of administration is authorized to prefund medical benefits provided by AS 14.25.480, AS 39.30.300, and AS 39.35.880 by establishing an irrevocable trust that is exempt from federal income tax under 26 U.S.C. 115 and subject to the applicable financial reporting, disclosure, and actuarial requirements of the Governmental Accounting Standards Board.

(c) The plans and assets of the Alaska retiree health care trusts shall be under the governance and investment authority of the Alaska Retirement Management Board, which shall serve as trustee of the trust as provided in

AS 37.10.210. The commissioner of administration or the commissioner's designee shall serve as administrator of the Alaska retiree health care trusts.

(d) All employer contributions, appropriations, earnings, and reserves for the payment of retiree medical obligations shall be credited to the retiree health care trusts. The prefunded amounts shall be available without fiscal year limitations for retiree medical benefits and administration costs. The amounts remaining in the trusts, if any, after retiree medical benefits and administration costs have been paid in any year shall be retained in the trusts for future payments until the satisfaction of all employer liabilities under the trusts for retiree medical benefits. All prefunded amounts shall be used solely for the payment of retiree medical benefits and administration costs and for no other purpose.

(e) The assets of the Alaska retiree health care trusts may be pooled, for investment purposes, with assets of the retirement systems, so long as such assets are accounted for separately.

History - (Sec. 50 ch 20 SLA 2007)

Cross References - For provision directing the commissioner of administration to transfer to the retiree health care trusts established under this section the funds that have been deposited in the group health and life benefits fund under AS 39.30.095, including funds in the retiree health insurance fund and retiree health benefit funds that may be held in other accounts, see Sec. 118, ch. 20, SLA 2007, in the 2007 Temporary and Special Acts.

Effective Date Notes - Section 120, ch. 20, SLA 2007, makes this section effective June 7, 2007, in accordance with AS 01.10.070(c).

History Reports - For governor's transmittal letter for ch. 20, SLA 2007 (SB 123), proposing needed corrections and clarifications of statutes enacted as part of the 2005 legislation establishing defined contributions retirement plans and making related amendments to defined benefit retirement plans and to retiree medical and health care benefits to be administered under this section, see 2007 Senate Journal 567 - 570.

## **SEC. 39.30.098. REGULATIONS.**

The commissioner of administration may adopt regulations to implement AS 39.30.090 - 39.30.097. Regulations adopted by the commissioner under this section relate to the internal management of state agencies, and their adoption is not subject to AS 44.62 (Administrative Procedure Act).

History - (Sec. 50 ch 20 SLA 2007)

Effective Date Notes - Section 120, ch. 20, SLA 2007, makes this section effective June 7, 2007, in accordance with AS 01.10.070(c).

**SEC. 39.30.100. [RENUMBERED AS AS 39.30.090(B)].**

Repealed or Renumbered

**ARTICLE 03. SPECIAL HAZARD INSURANCE****SEC. 39.30.130. SPECIAL HAZARD INSURANCE.**

Upon the request of any state department, the Department of Administration may procure insurance, in addition to workers' compensation insurance, for employees of the department against accidental death or dismemberment occasioned by special hazards in connection with their employment.

History - (Sec. 1 ch 227 SLA 1970)

**ARTICLE 04. SUPPLEMENTAL EMPLOYEE BENEFITS ON WITHDRAWAL FROM SOCIAL SECURITY**

## Section

- 150. Contributions
- 151. Administrator
- 153. Repayment of contributions
- 154. Powers and duties of the administrator
- 155. Management and investment of fund.
- 160. Benefits
- 162. Safeguard of money
- 165. Appeals
- 170. Participation in program
- 175. Investment of benefit program receipts
- 180. Definitions

**SEC. 39.30.150. CONTRIBUTIONS.**

(a) In place of contributions to the federal social security system that would have been required on behalf of an employee had the participating employer belonged to the social security system, the participating employer shall contribute an amount equal to 6.13 percent of the wages of the employee up to the taxable wage base then in effect in the social security system. This contribution shall be paid into an individual employee annuity account in the Department of Administration under the terms of the State of Alaska Supplemental Annuity Plan. The department shall pay 6.13 percent of the wages of the employee up to the taxable wage base then in effect in the social security system into the individual employee annuity account established under this

subsection. This wage reduction shall be treated as an employer contribution under 26 U.S.C. 414(h)(2). All costs of establishing and administering the programs established under AS 39.30.150 - 39.30.180 shall be paid from the contributions made to the individual employee annuity accounts under this section.

(b) Employees of the division of marine transportation included in AS 39.35.095 - 39.35.680 through the process of collective bargaining under AS 39.35.680(22)(D) may, under the terms of a collective bargaining agreement, utilize contributions made under (a) of this section on their behalf to offset the costs of inclusion in the public employees' retirement system; however,

(1) the state is placed under no obligation to continue making contributions under this section if the state resumes participation in the federal social security system;

(2) the bargaining agreement must provide a mechanism for satisfying any residual liabilities that might exist if the state resumes participation in the federal social security system; and

(3) funds contributed under (a) of this section on behalf of employees who are not covered by maritime union contracts may not be obligated or expended to pay any costs associated with the inclusion of marine transportation employees in AS 39.35.095 - 39.35.680.

(c) An employee may voluntarily elect additional wage reductions to be paid into special individual employee benefit accounts in the Department of Administration. Money in these accounts may only be used to purchase benefits selected by the employee under the supplemental benefits plan established by the administrator.

History - (Sec. 5 ch 58 SLA 1979; am Sec. 2, 3 ch 135 SLA 1980; am Sec. 16, 17 ch 146 SLA 1980; am Sec. 1, 2 ch 55 SLA 1988; am Sec. 71 ch 9 FSSLA 2005)

Revisors Notes - In 2005, in subsection (b), "AS 39.35.680(22)(D)" was substituted for "AS 39.35.680(21)(D)" to reflect the 2005 renumbering of AS 39.35.680(21).

Amendment Notes - The 2005 amendment, effective July 28, 2005, in subsection (b) substituted "in AS 39.35.095 - 39.35.680" for "in the public employees' retirement system" in the introductory language and in paragraph (3).

History Reports - For governor's transmittal letter on SSHB 252, from which ch. 55, SLA 1988 derives, see 1988 House Journal 2151-2153.

**SEC. 39.30.151. ADMINISTRATOR.**

The commissioner of administration or the commissioner's designee is the administrator of the system.

History - (Sec. 72 ch 9 FSSLA 2005)

**SEC. 39.30.153. REPAYMENT OF CONTRIBUTIONS.**

Upon termination of employment the amount held on behalf of a terminating employee in the employee's individual employee annuity account shall be paid to the employee under the terms of the State of Alaska Supplemental Annuity Plan.

History - (Sec. 39 ch 137 SLA 1982; am Sec. 3 ch 55 SLA 1988)

Editors Notes - Section 8, ch. 55, SLA 1988 provides that the amendments made to this section by ch. 55, SLA 1988 apply only "to contributions due the month after a determination is obtained that amendment of the plan in accordance with this Act will not adversely affect the deferral of taxes."

History Reports - For governor's transmittal letter on SSHB 252, from which ch. 55, SLA 1988 derives, see 1988 House Journal 2151-2153.

**SEC. 39.30.154. POWERS AND DUTIES OF THE ADMINISTRATOR.**

The administrator has the same powers and duties with regard to the plan as those set out in AS 14.25.003 and 14.25.004.

History - (Sec. 73 ch 9 FSSLA 2005; am Sec. 51 ch 20 SLA 2007)

Amendment Notes - The 2007 amendment, effective June 7, 2007, substituted "AS 14.25.003 and 14.25.004" for "AS 14.25.004."

**SEC. 39.30.155. MANAGEMENT AND INVESTMENT OF FUND.**

The Alaska Retirement Management Board is the fiduciary of the fund and has the same powers and duties under this section in regard to the fund as are provided under AS 37.10.220.

History - (Sec. 18 ch 146 SLA 1980; am Sec. 74 ch 9 FSSLA 2005)

Amendment Notes - The 2005 amendment, effective July 28, 2005, rewrote this section.

**SEC. 39.30.160. BENEFITS.**

(a) The Department of Administration shall, in accordance with policies prescribed by regulations adopted by the commissioner, provide to employees for whom special individual employee benefit accounts are established under AS 39.30.150(c) the following benefit options:

- (1) supplemental health benefits;
- (2) supplemental death benefits;
- (3) supplemental disability benefits; and
- (4) supplemental dependent care benefits.

(b) An employee may select the types and amounts of supplemental benefits to be purchased with the money deposited in the employee's special individual employee benefit accounts under AS 39.30.150. The selection for employees described in AS 39.30.150(a) must be from the benefit options listed in (a) of this section.

(c) [Repealed, Sec. 9 ch 55 SLA 1988].

(d) [Repealed, Sec. 40 ch 146 SLA 1980].

(e) Regulations adopted by the commissioner implementing AS 39.30.150 and this section are not subject to AS 44.62 (Administrative Procedure Act).

History - (Sec. 5 ch 58 SLA 1979; am Sec. 4, 5 ch 135 SLA 1980; am Sec. 19 - 22, 40 ch 146 SLA 1980; am Sec. 4, 5, 9 ch 55 SLA 1988; am Sec. 75 - 77 ch 9 FSSLA 2005; am Sec. 52, 53 ch 20 SLA 2007)

Amendment Notes - The 2005 amendment, effective July 28, 2005, in subsection (a) substituted "Alaska Retirement Management Board" for "Public Employees' Retirement Board" and updated a section reference; inserted "for employees described in AS 39.30.150(a)" in subsection (b); and substituted "by the board" for "by the Public Employees Retirement Board" in subsection (e).

The 2007 amendment, effective June 7, 2007, substituted "adopted by the commissioner" for "of the Alaska retirement management board" in subsection (a), and substituted "commissioner" for "board" in subsection (e).

History Reports - For governor's transmittal letter of SSHB 252, from which ch. 55, SLA 1988 derives, see 1988 House Journal 2151-2153.

Decisions - Marital property. - Supplemental employee benefits are marital property subject to equitable division at divorce. *Mann v. Mann*, 778 P.2d 590 (Alaska 1989).

### **SEC. 39.30.162. SAFEGUARD OF MONEY.**

(a) Except as provided in the State of Alaska Supplemental Annuity Plan, amounts held on behalf of, or payable to, an employee or other person who is or who might become eligible for benefits under the plan are not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge of any kind, either voluntary or involuntary, before being received by the person entitled to the amount under the terms of the plan. An attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, or otherwise dispose of a right to amounts held under the plan is void.

(b) Except as provided in AS 09.38.065, amounts held on behalf of, or payable to, an employee or other person who is or who might become eligible for benefits under the plan are exempt from garnishment, execution, or levy.

History - (Sec. 6 ch 55 SLA 1988)

History Reports - For governor's transmittal letter on SSBH 252, from which ch. 55, SLA 1988 derives, see 1988 House Journal 2151-2153.

### **SEC. 39.30.165. APPEALS.**

A final decision made under AS 39.30.150 - 39.30.180 is subject to appeal under AS 44.64.

History - (Sec. 54 ch 20 SLA 2007)

Effective Date Notes - Section 120, ch. 20, SLA 2007, makes this section effective June 7, 2007, in accordance with AS 01.10.070(c).

### **SEC. 39.30.170. PARTICIPATION IN PROGRAM.**

(a) An employer may become a participating employer in the employee benefits program under AS 39.30.150 - 39.30.180, if

(1) the employer participates as an employer in the public employees' retirement system under AS 39.35; and

(2) the employer

(A) is eligible for membership in but has never elected to become a member of the federal social security system; or

(B) withdraws from membership in the federal social security system.

(b) In order to become a participating employer, the employer shall file a request with the commissioner. The request may be made only after adoption of a resolution by the legislative body of a municipality, if the employer is a municipality, or by the board of directors, if the employer is a public organization, and after approval of the resolution by the official required by law to approve the resolution. A certified copy of the resolution shall be filed with the commissioner.

(c) The commissioner shall approve the request if the commissioner finds that the employer has never participated in the federal social security system or has withdrawn from participation in the federal social security system.

(d) The employer may begin participation as a participating employer covered by AS 39.30.150 - 39.30.180 on the date designated by the commissioner.

History - (Sec. 1 ch 135 SLA 1980; Sec. 23 ch 146 SLA 1980)

### **SEC. 39.30.175. INVESTMENT OF BENEFIT PROGRAM RECEIPTS.**

(a) The board is the fiduciary of the mandatory receipts, under AS 39.30.150(a), of the employee benefits program established under AS 39.30.150 - 39.30.180 and has the same powers and duties concerning the management and investment in regard to those receipts as are provided under AS 37.10.220.

(b) The board may provide a range of investment options and permit a participant or beneficiary of the program to exercise control over the assets in the individual employee annuity account established under AS 39.30.150(a). If the board offers investment options, and if a participant or beneficiary exercises control over the assets in the individual employee annuity account,

(1) the participant or beneficiary is not considered a fiduciary for any reason on the basis of exercising that control; and

(2) a person who is otherwise a fiduciary is not liable under this section for any loss, or by reason of any breach, that results from the individual's exercise of control.

(c) If the board is considering entering into a contract or modifying an existing contract concerning the management or investment of the mandatory receipts of the supplemental employee benefits program, the board shall consult with the commissioner of administration before making a decision on the issue.

(d) The board shall develop a contingency plan that addresses the board's response to possible future investment problems.

(e) Except to the extent clearly set out in the terms of the plan document offered by the employer to the employee, the employer is not liable to the employee for investment losses if the prudent investment standard has been met.

(f) [Repealed, Sec. 132 ch 9 FSSLA 2005].

History - (Sec. 14 ch 31 SLA 1992; am Sec. 78, 132 ch 9 FSSLA 2005)

Amendment Notes - The 2005 amendment, effective July 28, 2005, substituted “The board” for “The Alaska State Pension Investment Board” and updated a section reference in subsection (a); and repealed subsection (f).

## **SEC. 39.30.180. DEFINITIONS.**

In AS 39.30.150 - 39.30.180,

(1) “board” means the board of trustees of the Alaska Retirement Management Board established under AS 37.10.210;

(2) “commissioner” means the commissioner of the Department of Administration;

(3) “participating employer” means

(A) the State of Alaska; and

(B) an employer

(i) who is an employer as defined in AS 39.35.680;

(ii) who has never participated in or has withdrawn from participation in the federal social security system; and

(iii) whose participation in the supplemental employee benefit program has been approved by the commissioner.

History - (Sec. 1 ch 135 SLA 1980; Sec. 23 ch 146 SLA 1980; am Sec. 79 ch 9 FSSLA 2005)

Revisors Notes - Paragraph (1) was enacted as paragraph (3) and renumbered in 2005, at which time former paragraphs (1) and (2) were renumbered as (2) and (3).

Amendment Notes - The 2005 amendment, effective July 28, 2005, added paragraph (3) [now (1)].

## **ARTICLE 05. STATE OF ALASKA TEACHERS' AND PUBLIC EMPLOYEES' RETIREE HEALTH REIMBURSEMENT ARRANGEMENT PLAN**

### **SEC. 39.30.300. STATE OF ALASKA TEACHERS' AND PUBLIC EMPLOYEES' RETIREE HEALTH REIMBURSEMENT ARRANGEMENT PLAN ESTABLISHED.**

The State of Alaska Teachers' and Public Employees' Retiree Health Reimbursement Arrangement Plan is established for teachers who first become members of the defined contribution plan of the teachers' retirement system under AS 14.25.310 - 14.25.590 on or after July 1, 2006, and employees of the state, political subdivisions of the state, and public organizations of the state who first become members of the defined contribution plan of the public employees' retirement system under AS 39.35.700 - 39.35.990 on or after July 1, 2006.

History - (Sec. 80 ch 9 FSSLA 2005)

Article Notes - Effective Dates. AS 39.30.300 - 39.30.430 and AS 39.30.495 take effect July 1, 2006 under secs. 80 and 148, ch. 9, FSSLA 2005. AS 39.30.440 took effect July 28, 2005, and is retroactive to July 1, 2005.

Legislative History Reports. For governor's transmittal letter for ch. 20, SLA 2007 (SB 123), proposing needed corrections and clarifications of statutes enacted as part of the 2005 legislation establishing defined contributions retirement plans and making related amendments to defined benefit retirement plans, including amendments to retiree health reimbursement arrangements authorized by AS 39.30.300 - 39.30.495, see 2007 Senate Journal 567 - 570.

### **SEC. 39.30.310. PURPOSE AND EFFECTIVE DATE.**

(a) The purpose of the plan is to allow medical care expenses to be reimbursed from individual savings accounts established for eligible persons.

(b) The plan becomes effective July 1, 2006, at which time contributions by employers begin.

History - (Sec. 80 ch 9 FSSLA 2005)

**SEC. 39.30.320. ATTORNEY GENERAL.**

The attorney general of the state is the legal counsel for the plan and shall advise the administrator and represent the plan in a legal proceeding.

History - (Sec. 80 ch 9 FSSLA 2005)

**SEC. 39.30.330. ADMINISTRATOR.**

The commissioner of administration or the commissioner's designee is the administrator of the plan.

History - (Sec. 80 ch 9 FSSLA 2005)

**SEC. 39.30.335. APPEALS.**

A final decision made under AS 39.30.300 -39.30.495 is subject to appeal under AS 44.64.

History - (Sec. 55 ch 20 SLA 2007)

Effective Date Notes - Section 120, ch. 20, SLA 2007, makes this section effective June 7, 2007, in accordance with AS 01.10.070(c).

**SEC. 39.30.340. POWERS AND DUTIES OF THE ADMINISTRATOR.**

The administrator shall establish a teachers' and public employees' retiree health reimbursement arrangement plan trust fund in which the assets of the plan shall be deposited and held. The retiree health reimbursement arrangement plan trust fund may be a sub-trust of the Alaska retiree health care trust established under AS 39.30.097(b). The administrator has the same powers and duties with regard to the plan and the trust fund as provided in AS 14.25.003 and 14.25.004.

History - (Sec. 80 ch 9 FSSLA 2005; am Sec. 56 ch 20 SLA 2007)

Amendment Notes - The 2007 amendment, effective June 7, 2007, inserted the second sentence, and substituted "AS 14.25.003 and 14.25.004" for "AS 14.25.004" in the third sentence.

**SEC. 39.30.350. EMPLOYER CONTRIBUTION FUND.**

The fund established under AS 39.30.340 is an employer contribution fund. The value of the fund reflects employer contributions, expenses, and investment gains and losses. Employee contributions to the fund are not permitted.

History - (Sec. 80 ch 9 FSSLA 2005)

### **SEC. 39.30.360. MANAGEMENT AND INVESTMENT OF THE FUND.**

The Alaska Retirement Management Board is the fiduciary of the fund and has the same powers and duties under this section in regard to the fund as are provided under AS 37.10.220.

History - (Sec. 80 ch 9 FSSLA 2005)

### **SEC. 39.30.370. CONTRIBUTIONS BY EMPLOYERS.**

For each member of the plan, an employer shall contribute to the teachers' and public employees' retiree health reimbursement arrangement plan trust fund an amount equal to three percent of the average annual compensation of all employees of all employers in the teachers' retirement system and public employees' retirement system. The administrator shall maintain a record for each member to account for employer contributions on behalf of that member. The board shall establish by regulation the rate of interest to be applied annually to the amount in a member's individual account.

History - (Sec. 80 ch 9 FSSLA 2005; am Sec. 57 ch 20 SLA 2007)

Amendment Notes - The 2007 amendment, effective June 7, 2007, substituted "average annual compensation of all employees of all employers in the teachers' retirement system and public employees' retirement system" for "employer's average annual employee compensation" in the first sentence.

### **SEC. 39.30.380. TERMINATION OF EMPLOYMENT.**

A person who terminates employment before meeting the eligibility requirements of AS 14.25.470 or AS 39.35.870 loses any right to the contributions made on behalf of the person to the teachers' and public employees' retiree health reimbursement arrangement trust fund. If a person returns to employment with a participating employer by December 31 of the year in which the person reaches 65 years of age, the person's account balance shall be restored in the amount recorded on the date of termination from the trust, adjusted for inflation at the rate of the Consumer Price Index for Anchorage, Alaska. The earlier period of employment with a participating employer shall be credited toward eligibility for medical benefits.

History - (Sec. 80 ch 9 FSSLA 2005)

### **SEC. 39.30.390. ELIGIBILITY AND REIMBURSEMENT.**

Persons who meet the eligibility requirements of AS 14.25.470 and AS 39.35.870 are eligible for reimbursements from the individual account established for a member under the plan, except members do not have to retire directly from the system. A person who is the dependent child of an

eligible member is eligible for reimbursements if the eligible member and surviving spouse have both died so long as the person meets the definition of dependent child.

History - (Sec. 80 ch 9 FSSLA 2005)

**SEC. 39.30.400. BENEFITS PAYABLE FROM THE INDIVIDUAL ACCOUNT.**

(a) The administrator may deduct the cost of monthly premiums from the individual account for retiree major medical insurance on behalf of an eligible person who elected retiree major medical insurance under AS 14.25.480 or AS 39.35.880.

(b) Upon application of an eligible person, the administrator shall reimburse to the eligible person the costs for medical care expenses as defined in 26 U.S.C. 213(d). Reimbursement is limited to the medical expenses of

(1) an eligible member, the spouse of an eligible member, and the dependent children of an eligible member; or

(2) a surviving spouse and the dependent children of an eligible member dependent on the surviving spouse.

(c) When the member's individual account balance is exhausted, the insurance premium deductions under (a) of this section and the reimbursement of medical care expenses under (b) of this section end.

(d) If all eligible persons die before exhausting the member's individual account, the account balance shall revert to the plan.

History - (Sec. 80 ch 9 FSSLA 2005)

**SEC. 39.30.410. EXEMPTION FROM TAXATION AND PROCESS.**

(a) Contributions and other amounts held in the plan on behalf of a member or other person who is or may become eligible for benefits under the plan may be used only to reimburse eligible medical expenses, are exempt from Alaska state and municipal taxes and federal taxes to the extent allowed under the Internal Revenue Code, and are not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge of any kind, either voluntary or involuntary, before they are received by the person entitled to the amount under the terms of the plan. Any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, or otherwise dispose of any right to amounts accrued in the plan is void. However, a member's right to receive benefits may be assigned

(1) under a qualified domestic relations order; or

(2) to a trust or similar legal device that meets the requirements for a Medicaid-qualifying trust under AS 47.07.020(f) and 42 U.S.C. 1396p(d)(4).

(b) Notwithstanding AS 09.38.065, contributions and other amounts held in the plan and benefits payable under this plan are exempt from garnishment, execution, or levy.

History - (Sec. 80 ch 9 FSSLA 2005)

### **SEC. 39.30.420. AMENDMENT AND TERMINATION OF PLAN.**

(a) The state has the right to amend the plan at any time and from time to time, in whole or in part, including the right to make retroactive amendments referred to in 26 U.S.C. 401(b).

(b) The plan administrator may not modify or amend the plan retroactively in such a manner as to reduce the benefits of any member accrued to date under the plan by reason of contributions made before the modification or amendment except to the extent that the reduction is permitted by the Internal Revenue Code.

(c) The state may, in its discretion, terminate the plan in whole or part at any time without liability for the termination. If the plan is terminated, all investments remain in force until all individual accounts have been completely distributed under the plan, and, after all plan liabilities are satisfied, excess assets revert to the employer.

(d) Any contribution made by an employer to the plan because of a mistake of fact must be returned to the employer by the administrator within one year after the contribution or discovery, whichever is later.

History - (Sec. 80 ch 9 FSSLA 2005)

### **SEC. 39.30.430. EXCLUSIVE BENEFIT.**

(a) The corpus or income of the assets held in trust as required by the plan may not be diverted or used for other than the exclusive benefit of the participants.

(b) The assets of the plan may not be used to pay premiums or contributions of the employer under another plan maintained by the employer.

History - (Sec. 80 ch 9 FSSLA 2005)

**SEC. 39.30.440. REPORT TO THE LEGISLATURE ON HEALTH CARE COST-SAVING MEASURES.**

The Department of Administration shall provide an annual report to the legislature regarding the cost-saving measures it has implemented by regulation appropriate to current and future retirees in the health care system.

History - (Sec. 142 ch 9 FSSLA 2005)

Revisors Notes - This section was enacted as sec. 142, ch. 9, FSSLA 2005, and codified in 2005.

**SEC. 39.30.495. DEFINITIONS.**

Unless the context requires otherwise, in AS 39.30.300 - 39.30.495,

(1) “administrator” means the commissioner of administration or the commissioner’s designee;

(2) “board” means the Alaska Retirement Management Board established under AS 37.10.210;

(3) “compensation” has the meaning given in AS 14.25.590;

(4) “dependent child” has the meaning given in AS 39.35.680;

(5) “eligible person” means a person who meets the eligibility requirements of AS 14.25.470 or AS 39.35.870;

(6) “employer” has the meaning given in AS 14.25.590 for employers of teachers in the defined contribution plan established in AS 14.25.310 - 14.25.590 and has the meaning given in AS 39.35.990 for employers of public employees in the defined contribution plan established in AS 39.35.700 - 39.35.990;

(7) “fund” means the assets of the teachers’ and public employees’ retiree health reimbursement arrangement plan trust fund;

(8) “individual account” means the record established by the administrator for individual employees under the teachers’ and public employees’ retiree health reimbursement arrangement plan;

(9) “member” means a member of the defined contribution plan of the teachers’ retirement system in AS 14.25.310 - 14.25.590 or a member of the public employees’ retirement system in AS 39.35.700 - 39.35.990;

(10) “plan” means the State of Alaska Teachers’ and Public Employees’ Retiree Health Reimbursement Arrangement Plan established in AS 39.30.300;

(11) “qualified domestic relations order” has the meaning given in AS 14.25.220.

History - (Sec. 80 ch 9 FSSLA 2005)

## **CHAPTER 39.45. PUBLIC EMPLOYEES' DEFERRED COMPENSATION PROGRAM**

Administrative Code - For deferred compensation plan, see 2 AAC 37, art. 4.

History Reports - For governor's transmittal letter for ch. 20, SLA 2007 (SB 123), proposing needed corrections and clarifications of statutes enacted as part of the 2005 legislation establishing defined contributions retirement plans and making related amendments to defined benefit retirement plans, including amendments of provisions of the deferred compensation program authorized by this chapter, see 2007 Senate Journal 567 - 570.

### **SEC. 39.45.010. AUTHORITY.**

The state or a political subdivision of the state may, by contract, agree with an employee to defer, in whole or in part, that employee's salary or wages.

History - (Sec. 1 ch 40 SLA 1973; am Sec. 1 ch 125 SLA 1986)

### **SEC. 39.45.020. ADMINISTRATION OF PROGRAM.**

(a) The administration of the deferred compensation program for state employees is under the direction of the Department of Administration. A political subdivision coming under the provisions of this chapter shall designate the office or official to administer its program.

(b) Payroll deductions are authorized by this chapter and shall be made by the appropriate payroll officer.

(c) The administrator of a deferred compensation program may contract with a private person for providing consolidated billing and other administrative services. The administrator may contract with an insurance carrier to reimburse the state or political subdivision of the state for the cost of administering the deferred compensation program.

(d) The administrator of a deferred compensation program under this chapter has the powers and duties with regard to the program as set out in AS 14.25.003 and 14.25.004, as though those provisions applied to the program.

History - (Sec. 1 ch 40 SLA 1973; am Sec. 60 ch 138 SLA 1986; am Sec. 113 ch 20 SLA 2007)

Amendment Notes - The 2007 amendment, effective June 7, 2007, added subsection (d).

**SEC. 39.45.021. ACCOUNTING AND DISPOSITION OF FEES.  
[REPEALED, SEC. 28 CH 90 SLA 1991].**

Repealed or Renumbered

**SEC. 39.45.025. DUTIES OF THE PUBLIC EMPLOYEES  
RETIREMENT BOARD. [REPEALED, SEC. 132 CH 9  
FSSLA 2005].**

Repealed or Renumbered

**SEC. 39.45.030. INVESTMENT AUTHORITY.**

(a) The Alaska Retirement Management Board is authorized, subject to contracts with individual employees, to invest the funds held under a deferred compensation program. The board has the same powers and duties concerning the management and investment in regard to those funds as are provided under AS 37.10.220.

(b) [Repealed, Sec. 24 ch 31 SLA 1992].

(c) The board may provide a range of investment options and permit a participant or beneficiary of the program to exercise control over the assets in the individual's account. If the board offers investment options, and if a participant or beneficiary exercises control over the assets in the individual's account,

(1) the participant or beneficiary is not considered a fiduciary for any reason on the basis of exercising that control; and

(2) a person who is otherwise a fiduciary is not liable under this section for any loss, or by reason of any breach, that results from the individual's exercise of control.

(d) If the board is considering entering into a contract or modifying an existing contract concerning the management or investment of funds of the deferred compensation program, the board shall consult with the commissioner of administration before making a decision on the issue.

(e) The board shall develop a contingency plan that addresses the board's response to possible future investment problems.

(f) Except to the extent clearly set out in the terms of the plan document offered by the employer to the employee, the employer is not liable to the employee for investment losses if the prudent investment standard has been met.

(g) In this section, “board” means the Alaska Retirement Management Board.

History - (Sec. 1 ch 40 SLA 1973; am Sec. 2, 3 ch 125 SLA 1986; am Sec. 19, 20, 24 ch 31 SLA 1992; am Sec. 123, 124 ch 9 FSSLA 2005)

Amendment Notes - The 2005 amendment, effective July 28, 2005, substituted “Alaska Retirement Management Board” for “Alaska State Pension Investment Board” in subsections (a) and (g) and updated a section reference in subsection (a).

### **SEC. 39.45.040. ADDITIONAL BENEFITS.**

The deferred compensation program established under this chapter exists and serves in addition to any existing retirement, pension, or benefit system established by the state or its political subdivisions and may not effect a reduction in benefits receivable under an existing system.

History - (Sec. 1 ch 40 SLA 1973)

Revisors Notes - In 1973, the phrase “may not affect a reduction” was changed to “may not effect a reduction” to correct a manifest typographical error in Sec. 1, ch. 40, SLA 1973.

### **SEC. 39.45.050. TAX DEFERRED INVESTMENTS.**

The administrator of a deferred compensation program under this chapter shall invest only in contracts that allow for deferment of the state and federal income tax until benefits are receivable under the program and shall make appropriate withholding adjustments in each participating employee’s payroll.

History - (Sec. 1 ch 40 SLA 1973)

### **SEC. 39.45.055. APPEALS.**

A final decision made under AS 39.45.010 - 39.45.060 is subject to appeal under AS 44.64.

History - (Sec. 114 ch 20 SLA 2007)

Effective Date Notes - Section 120, ch. 20, SLA 2007, makes this section effective June 7, 2007, in accordance with AS 01.10.070(c).

### **SEC. 39.45.060. DEFINITIONS.**

In this chapter,

(1) “board” means the trustees of the Alaska Retirement Management Board established under AS 37.10.210;

(2) “employee” means a person, whether appointed, elected, or under contract, who provides services for the state or a political subdivision of the state for which compensation is given.

History - (Sec. 1 ch 40 SLA 1973; am Sec. 125 ch 9 FSSLA 2005)

Revisors Notes - Paragraph (1) was enacted as paragraph (2) and renumbered in 2005, at which time the text of the definition of the term “employee” was renumbered as paragraph (2).

Amendment Notes - The 2005 amendment, effective July 28, 2005, added paragraph (2) [now (1)].



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